*** THE HON'BLE MR JUSTICE J.CHELAMESWAR**

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

+ WRIT APPEAL NO : 757 of 2005, W.P.Nos. 4880, 5175, 5896, 6003 & 6244 of 2005

% THURSDAY, TWENTYFIRST DAY OF APRIL,

TWO THOUSAND FIVE

Md. Abdul Azeez Asad, S/o. M.A. Hakeem,
Resident of 12-2-727/2, Rethi Bowli, Mehdipatnam Reing Road,
Hyderabad and Others

Petitioners

Versus

$ State of Andhra Pradesh represented by its Principal Secretary to Govt. Health, Medical and Family Welfare Department, Secretariat, Saifabad, Hyderabad and others.

Respondents

! Counsel for the petitioner: Sri Nuty Rama Mohan Rao,

Ms Gottipati Kavitha,

^ Counsel for the respondents: Sri J.Sudheer, Special Government Pleader, for the Government and NTR University of Health Sciences

Sri S.Niranjan Reddy, for Medical Council of India

Sri G. Vidyasagar

Sri K.Srinivasa Murthy,Counsel

for impleaded respondents.

< Gist :

``

>Head Note:

? (1) 2002(2) ALD 409

(2) (2005) 1 SCC 394

(3) AIR 1996 SC 1378

(4) 2002(4) ALD 389

(5) (1969) 1 SCC 839

(6) 1992 Supp.(3) SCC 217

(7) 1995(1) ALT 275

(8) AIR 1955 SC 661

(9) (1975) (1) SLR 20

(10) 1998 (5) ALD 57 DB

(11) AIR 1986 SC 468

(12) (1985) 1 SCC 68

(13) AIR 1985 SC 218

(14) (1984) 4 SCC 450

(15) 2000(2) ALD 532

(16) (2003) 5 SCC 350

(17) AIR 2000 AP 308

(18) AIR 1959 SC 149

(19) 1986 Supp. SCC 285

(20) AIR 1998 SC 795

(21) (1979) 3 SCC 165

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY , THE 21ST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT APPEAL NO : 757 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15/03/2005 in WPMP NO.6872 OF 2002 IN WP NO : 5175 OF 2005 on the file of the High Court.)

Between:

Md. Abdul Azeez Asad, S/o. M.A. Hakeem,
Resident of 12-2-727/2, Rethi Bowli, Mehdipatnam Ring Road,
Hyderabad.

..... APPELLANT

AND

1 State of Andhra Pradesh represented by its Principal Secretary to Govt. Health, Medical and Family Welfare Department, Secretariat, Saifabad, Hyderabad.
2 NTR University of Health Sciences represented by its Registrar, Vijayawada.
3 Medical Council of India, Aiwan-e-Ghalaeb Marg, Kotla Road, Opp : Mathasundari College (Women) New Delhi - 110 002. Rep by its Secretary

.....RESPONDENTS

Counsel for the Appellant: MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.1: ADVOCATE GENERAL FOR Mr. J. Sudheer,Special Government Pleader for M&H

Counsel for the Respondent No.2: Smt.Y.Padmavathi

Counsel for the Respondent No.3: Mr. S. Niranjan Reddy

WRIT PETITION NO : 4880 of 2005

Between:

1 Maheshwar Lakki Reddy, s/o L.Ramakrishna r/o Hyderabad.
2 Ram Prasada Reddy Akkamgari, s/o Janga Reddy, r/o Mallepally Village, Sangareddy, Medak District.
3 D.Prasada Reddy, s/o D.Shankar Reddy, r/o Hyderabad.
4 Gopikrishna R. s/o R.Subba Rao, r/o Hyderabad.
5 K.Uday Madhav, s/o Perumalu Gupta, r/o Bheemavaram, E.G.District.

..... PETITIONERS

AND

1 State of Andhra Pradesh rep., by its secretary, Health, Medical and Family Welfare Department, Secretariat, Hyderabad.
2 NTR University of Health Sciences rep., by its Registrar, Vijayawada.

3 Gudipati Anantharam son of G.Ramatheertharao,Hyderabad.

(R-3 impleaded vide order dated 08-04-05 in WPMP.7387 of 2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly, one in the nature of writ of mandamus: a) by declaring the action of the respondents in allowing sliding in different branches in admissions to Post-graduate Medical Courses in favour of reserved category candidates as arbitrary, illegal and violative of Article 14 and the statutory rules framed for admission into Post-graduate Medical Courses; b) direct the respondents to fill up the post-graduate Medical seats purely based upon merit and the resultant vacancies should be filled up strictly in accordance with merit; and c) declare the action of the respondents in following 100 point roster for the purpose of admission into post-graduate Medical Courses as arbitrary, illegal and violative of Article 14 of the Constitution of India; d) declare the action of the respondents in following 100 point roster for the purpose of admission into post-graduate Medical Courses as arbitrary, illegal and violative of Article 14 of the Constitution and pass such order or further orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.1: ADVOCATE GENERAL FOR Mr. J.

Sudheer,Special Government Pleader for M&H

Counsel for the Respondent No.2: Smt.Y.Padmavathi

Counsel for the Respondent Nos.3: Mr.K.S.Murthy and G.Vidya Sagar

WRIT PETITION NO : 5175 of 2005

Between:

1 Md.Abdul Azeez Asad S/o. M.A.Hakeem,
Resident of 12-2-727/2, Rethi Bowli, Mehdipatnam Ring Road, Hyderabad.
2 Suman S. S/o. Vijaya Kumar (HM), Khammam.
3 B.Sudershan Reddy, S/o. B.V.Subba Reddy,43/262/1/2, Sankalbad, Kurnool.

..... PETITIONERS

AND

1 State of Andhra Pradesh rep. by its Principal Secretary to Govt, Health, Medical & FW Department Secretariat, Saifabad, Hyderabad.
2 NTR University of Health Sciences rep. by its Registrar, Vijayawada.
3 Midical Council of India, Aiwan-e-Ghaleb Marg,
New Delhi - 110 002. rep. by its Secretary.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction: more Particularly, one in the nature of a Writ of Mandamus: a) Declare that the rules framed and published through Notification No.18 of A.P.Gazette Extraordinary issue dated 25.02.2005 through which the preparation of seat matrix rules for post-graduate courses has been notified as bad in law; Alternatively, declare that the 2nd respondent University cannot adopt, follow or regulate the post-graduate admissions for the academic session 2005-06 based thereon and consequently, direct 1st and 2nd respondent-university undertake the admission process afresh without any reference to the notification contained in G.O.Ms.No.44 Medical, Health & Family Welfare (E.II) Department, dated 25.02.2005; (b) By declaring the action of the respondents in allowing sliding in admissions to different branches of Post-graduate Medical Courses in favour of reserved category candidates as arbitrary, illegal and violative of Article 14 and the statutory rules framed for admission into Post-graduate Medical Courses; (c) Direct the respondents to fill up the post-graduate Medical seats purely based upon merit including the resultant vacancies, and (d) Declare the action of the respondents in following the 100 point roster for the purpose of admission into post-graduate Medical Courses as arbitrary, illegal and violative of Article 14 of the Constitution of India; and pass such order or further orders

Counsel for the Petitioners: MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.1: ADVOCATE GENERAL

Counsel for the Respondent No.2: Dr.Y.Padmavathi

Counsel for the Respondent No.3: Mr. S. Niranjan Reddy

WRIT PETITION NO : 5896 of 2005

Between:

J.Gopalakrishna S/o.J.Srinivas Rao, R/o.Hyderabad.

..... PETITIONER

AND

1 State of A.P., Rep by its Secretary
Health, Medical and Family Welfare Dept Secretariat , Hyderabad.
2 NTR University of Health Sciences Rep by its Registrar
Hyderabad.
3 Medical Council of India, Rep by its Secretary
Aiwan-e-Ghaleb Marg, Kotla Road, Opp: Mathasundari College,(Women)
New Delhi.

4 T.N.Sateesh son of T.Nanjundra Rao, Kavurnagar,Anantapur District.

(R-4 impleaded vide orders dated 08-04-2005 in WPMP No.8933 of 2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Maybe pleased to issue a writ, order or direction; more particularly one in the nature of Writ of Mandamus: a). Declare the action of the NTR University of Health Sciences in providing for class reservation in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and the other categories even within the 15% of Unreserved segment of seats as unconstitutional and illegal and consequently, set aside all such provisional admissions made by the NTR University of Health Sciences in this regard and consequently, direct the NTR University of Health Sciences to grant admission in favour of the writ petitioner duly taking into account his merit ranking No.102 at the post-graduate entrance examination conducted by it for the academic session 2005-006; b). Declare that the rules framed and published through Notification No.18 of A.P. Gazette Extraordinary issue dt.25-02-2005 through which the preparation of seat matrix rules for post-graduate courses has been notified as bad in law; Or alternatively, declare that the 2nd respondent University cannot adopt, follow or regulate the post-graduate admissions for the academic session 2005-06 based thereon and consequently, direct the 2nd respondent University to undertake the admission process afresh without any reference to the notification contained in G.O.ms.No.44 Medical, Health & Family Welfare (E.II) Department, dated 25-02-2005; c). By declaring the action of the respondents in allowing sliding in admissions to different branches of Post-graduate Medical Courses in favour of reserved category candidates as arbitrary, illegal and Violative of Article 14 and the statutory rules framed for admission into Post- Graduate Medical Courses; d).Direct the respondents to fill up the post-graduate Medical seats purely based upon merit including the resultant vacancies, and e) Declare the action of admission in following the 100point roster for the purpose of admission into Post-graduate Medical Courses as arbitrary, illegal and violative of Article 14 of the Constitution of India and pass such other order or orders .

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.1: ADVOCATE GENERAL

Counsel for the Respondent No.2: Dr.Y.Padmavathi,

Counsel for the Respondent No.3: Mr. S. Niranjan Reddy

Counsel for the Respondent No.4: Mr.N.A.Ramchandra Murthy

WRIT PETITION NO : 6003 of 2005

Between:

Vempati Sirisha, D/o. V.S.Prakash Sharma,
H.No.3-5-1093/10, Venkateswara Colony, Narayanaguda, Hyderabad.

..... PETITIONER

AND

1 State of A.P., rep. by its Secretary, Medical & Family Welfare Department Secretariat, Hyderabad.
2 NTR University of Health Sciences, rep. by its Registrar,Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Order Writ or Direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in allowing sliding in different branches in admissions to Post-Graduate Medical Courses in favour of reserved category candidates and in following 100 points roster for the purpose of admission into P.G Medical Course (Master's Degree) as arbitrary, illegal, and violative of Article 14 of the Constitution of India and consequently direct the respondents to fill up the post graduate Medical seats purely based upon merit and the resultant vacancies should be filled up in accordance with merit, and pass such other order or orders.

Counsel for the Petitioner: SMT.KAVITHA GOTTIPATI

Counsel for the Respondent No.1: ADVOCATE GENERAL for GP for M&H

Counsel for the Respondent No.2 Dr.Y.Padmavathi

-

WRIT PETITION NO : 6244 of 2005

Between:

T.N. Sateesh, S/o. T. Nanjunda Rao, Hindu,
R/o.H.No. 6/2/222, Kavurnagar, Anantapur.

..... PETITIONER

AND

1 Govt. of Andhra Pradesh, Rep by its Secretary, Health, Medical and Family Welfare Department, Secretariat, Hyderabad.
2 NTR University of Health Sciences , rep by its Registrar, Vijayawada.
3 Medical Council of India , Aiwan-e-Ghaleb Marg, Kotla Road, Opp : Mathasundari College, (Women) New Delhi - 110 002. Rep by its Secretary

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an appropriate order or direction more particularly one in the nature of Writ of Mandamus : a) To declare that the action of the NTR University of Health Sciences in providing for class reservation in favour of scheduled Castes, scheduled Tribes, Backward Classes and other categories even within the 15 % of unreserved segment of seats as unconstitutional and illegal and consequently set aside all such provisional admissions made by the NTR University of Health Sciences in this regard and consequently direct the NTR University of Health Sciences to grant admission in favour of the writ petitioner duly taking into account his merit ranking No. 76 at the post-graduate entrance examination conducted by it for the academic session 2005-06 b) To declare that the rules framed and published through Notification No. 18 of A.P. Gazette Extraordinary issued vide G.O.Ms.No. 44, dated 25-2-2005 through which the preparation of seat matrix rules for post-graduate courses has been purpose of admission as illegal,

inoperative and unconstitutional and consequently direct the second respondent University to implement the Roster point on subject wise and to process afresh without any reference to the notification contained in G.O.Ms.No. 44 Medical, Health&Family Welfare (E.II) Department, dated 25-2-2005. c) To declare that the action of the respondents in allowing sliding in admissions to different branches of post graduate Medical Courses in favour of the reserved category under Clause VII and VIII of para IV of G.O.Ms.NO. 44, Health, Medical & Family Welfare (E2) Department, dt. 25-2-2005 as unconstitutional and in violation of Articles 14 & 16 of the constitutional of India and consequently direct the respondentsj to fill up the seats purely on the basis of merit including the resultant vacancies. d) and to allot the seat to the petitioner on the basis of merit by giving an opportunity to exercise option and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and consequently direct the respondents

Counsel for the Petitioner: MR.N.A.RAMACHANDRA MURTHY

Counsel for the Respondent No.1: ADVOCATE GENERAL

Counsel for the Respondent No.2: Dr.Y.Padmavathy

Counsel for the Respondent No.3: Mr. S. Niranjan Reddy

The Court made the following

:ORDER:

(Per: **Hon'ble Sri Justice Goda Raghuram**)

This is professional courses admissions time in the State. Inevitably, it is the time for the complimentary annual event – challenges to the admission programmes to professional courses of study. The accommodation of the numerous, competing and conflicting claims to special treatment and opportunities for admissions to higher courses of professional studies, engender very complex adjustments for accommodating the several sectoral interests. The complexities increase every year and fertilise the contestable positions. The litigation has thus become regnant. The latest conflict in this area is presented to us. The conflict has a legal disposition. We, therefore, proceed to adjudicate.

This batch of cases includes five (5) writ petitions – W.P. Nos. 4880, 5175, 5896, 6003 and 6244 of 2005 and W.A. No. 757 of 2005. The appeal is directed against an interlocutory order dated 15.03.2005 of a learned single Judge of this Court, rejecting W.P.M.P. No.6872 of 2005 in W.P. No. 5175 of 2005 wherein the appellants-writ petitioners sought stay of counselling (for Post-Graduate Medical seats) scheduled to be conducted from 14-03-2005.

All the petitioners are Medical Graduates desirous of pursuing Postgraduate Medical education. The N.T.R. University of Health Sciences (for short 'the Health University') by the notification dated 24.01.2005 notified the process of admissions to Postgraduate Medical Degree and Diploma courses for the academic year 2005-2006. The entrance test was conducted on 27.02.2005. All the petitioners appeared at the entrance test. The results of the test were published on 03.03.2005. The five petitioners in W.P.No. 4880 of 2005 obtained rank Nos. 72, 176, 198, 136 and 147 respectively at the entrance examination. The three petitioners in W.P.No. 5175 of 2005 obtained rank Nos. 171, 334 and 116 respectively. The sole petitioner in W.P.No. 5896 of 2005 secured rank No.102. The petitioner in W.P.No. 6003 of 2005 secured rank No.483 and the petitioner in W.P.No. 6244 of 2005 rank No.76.

In brief, the grievance of the petitioners is that the process and procedure adopted by the Health University for admission to Postgraduate Medical Degree and Diploma courses offends their right to equal opportunity in the matter of (higher professional) education, guaranteed under Articles 14 and 15 of the Constitution and that the Rules framed by the State Government to regulate the admissions procedure, subvert the equality injunctions of the constitution and are patently irrational, arbitrary and inoperable. The petitioners seek invalidation of the Rules issued by the State Government in G.O.Ms. No.44, Health, Medical and Family Welfare (E-2) Department, dated 25.02.2005 published in A.P. Gazette of even date.

These matters came to be listed before the Full Bench on a reference dated 12.04.2005 made by a learned Division Bench of this court. One of the substantive issues that requires adjudication in these writ petitions is as to the legality of the adoption by the State Government and the Health University, of the 100 point roster, to all the Postgraduate Medical Degree and Diploma courses (such as Anaesthesia, Anatomy, Bio-chemistry, Forensic Medicine, General Surgery, Ophthalmology, Paediatrics, Pathology, Pharmacology and the like. In ***Preeti Puranik v N.T.R. University of Health Sciences, A.P.(),*** a Division Bench of this court upheld the validity of application of the 100 point roster to Postgraduate Medical admissions. For the current academic year, not only was the 100 point roster applied to the Postgraduate Medical admissions but (under Rules issued in G.O.Ms.No.44, dated 25.02.2005) a format called ***"Seat Matrix"*** was applied whereby the 100 point roster was applied (in a running cycle) to all the several distinct, dissimilar and unconnected disciplines of Postgraduate Medical education, both Degree and

Diploma courses en bloc, on the basis of an asserted alphabetical arrangement of the several courses of study, including an alphabetical arrangement of the medical colleges in which specified seats in each discipline, are available, for each of the three local areas of the State (Andhra University, Osmania University and Sri Venkateswara University). Having regard to the decision of the Division Bench in ***Preeti Puranik's*** case (1 supra), the correctness of which was doubted by the Division Bench, the matters came to be referred to the Full Bench.

We have heard Sri Nuty Rama Mohan Rao, learned counsel for the petitioners, Sri J.Sudheer, learned Special Government Pleader for the State Government and the N.T.R. University of Health Sciences, Sri S.Niranjan Reddy, learned counsel for the Medical Council of India, Sri G.Vidya Sagar and Sri K. Srinivasa Murthy for selected candidates who have impleaded themselves as respondents in some of the writ petitions.

THE RELEVANT AND GOVERNING STATUTORY AND OTHER PROVISIONS:

(A) The Andhra Pradesh (Regulation of Admissions) Order, 1974 :- (for short 'the Presidential Order')

The Presidential Order is issued (by the President of India) in exercise of powers conferred by Clauses (1) and (2) of Article 371-D of the Constitution of India. The provisions of the Presidential Order have over-riding effect over any other provision of the Constitution and any other Law for the time being in force (Clause (10) of Art. 371-D). Paragraph-2(a) defines the expression "available seats" to mean – the number of seats provided in that course for admission, excluding those seats reserved for candidates from outside the State. Paragraphs-2(e) and (f) define "State-wide Educational Institutions" and "State-wide Universities" respectively, for which a separate scheme of reservation for local candidates is provided (in the Schedule to the Presidential Order). In so far as relevant and material for the purposes of this *lis,* Dental, Neuro Surgery, Public Health, Radio Diagnosis and Radio Therapy Departments of the Osmania Medical College, Hyderabad and the Siddhardha Medical College, Vijayawada, are specified in the schedule to the

Presidential Order to be State-wide Educational Institutions. Paragraph –5 mandates that admission to 85% of the available seats in every course of study, provided by any of the universities or educational institutions (which are subject to the control of the State Government) in each of the three local areas, shall be reserved in favour of the local candidates in relation to the relevant local area. Paragraph–6 of the Presidential Order specifies the reservations in State-wide universities and State-wide educational institutions and mandates that admission to 85% of the available seats in every course of study provided by a State-wide university or a State-wide educational institution shall be reserved in favour of local candidates and allocated among the local candidates in relation to the three local areas (Andhra University, Osmania University and Sri Venkateswara University), in the ratio 42:36:22 respectively. Paragraph –10, saves the powers of the State Government or competent authority to make special provisions for reservations in admissions, in favour of women, socially and educationally backwards classes of citizens, Scheduled Castes and Scheduled Tribes, to the extent such provisions are compatible with the Presidential Order.

(B) G.O.P. No. 646 :-

In G.O.P. No. 646, dated 10.7.1979 the State Government issued consolidated instructions for implementing the provisions of the Presidential Order. Annexure-III of G.O.P. No. 146 details the procedure for implementing the provisions of the Presidential Order in respect of non-State-wide universities and educational institutions subject to the control of the State Government. Annexure-IV sets out the procedure for implementation of the provisions of the Presidential Order, in respect of State-wide universities and State-wide educational institutions that are subject to the control of the State Government.

(C) The Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act 5/83) :- (for short 'the 1983 Act')

According to Sec. 3 admission into Medical and Engineering Colleges shall however be only on the basis of ranking assigned in the common entrance test. Sec.3(2) mandates that admission into educational institutions shall be subject to such rules as may be made by the Government in regard to reservation of seats to the members belonging to SC, ST and BC communities and other categories of

students as may be notified by the Government in this behalf and shall also be subject to the Presidential Order. Sec.12 provides over-riding effect to the provisions of the 1983 Act notwithstanding anything inconsistent there with contained in any other law for the time being in force. Sec.15 enables the State Government to make rules to carry out all or any of the purposes of the Act.

(D) The Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules 1997 :- (for short 'the 1997 Rules')

The 1997 Rules were issued by the State Government in G.O.Ms.No. 260, Health, Medical & Family Welfare (E-2) Department, dated 10.7.1997. Rule-2 specifies that the number of seats in Post Graduate Degree and Diploma courses in various disciplines in each Medical College shall be notified by the Health University every year. Under Rule 3(1) 15%, 6% and 25% of the total number of seats notified in each group for Degree and Diploma courses separately shall be reserved for SC, ST and BC communities respectively. Under Rule3(2) 15% of seats in clinical subjects and 30% seats in non-clinical subjects in each group for Degree and Diploma courses separately are reserved for non-service candidates in each category under service quota. Even candidates selected on merit in the respective categories are to be counted against service quota. Rule-4 reiterates the provisions of the Presidential Order and sub-rule (G) thereof proceeds to define which category of students are eligible to apply for admission to 15% of unreserved seats under the Presidential Order. Rules-5 to 9 spell out several housekeeping provisions like the mode and method of obtaining and submitting applications, academic eligibility for applying for PG courses, the power of the Health University to issue notifications inviting applications, the prescriptions regarding entrance test and the preparation of merit list. Rule-10 sets out the method of conducting selections, of candidates for the several seats in different disciplines in Post Graduate Medical Degree and Diploma courses.

Sub-rules (iv), (v)(a) & (b) and (vi)(a)&(b) of Rule-10 being relevant and material, are extracted herein below:

> "10 SELECTIONS:
>
> (iv) On the dates notified the candidates shall be called in order of merit by the selection committee and ask them to opt for subject of the candidates

choice in the then available subjects in the college. The selection committee will issue the selection order immediately. The selection will be made only from among the candidates who physically present themselves when their hall ticket numbers are called out in order of merit.

(v) (a) Claims of the candidates will not be considered if they are absent when called at the time of selection and the next in the merit would be selected. The selected candidate shall submit the original certificates to the selection committee and pay fees immediately at the counters available at the centre.

The candidates shall submit required bond on or before the date fixed for the same.

(b) If a candidate after choosing the subject fails to pay the fees or after paying the fees fails to submit the bond the selection of such candidate stands cancelled automatically.

… … …

(vi) (a) Vacancies after the 1st selection shall be displayed on the date notified in all the Medical Colleges. These vacancies shall be filled by the Selection committee on the dates at the centres to be notified by the University as per merit, subject to these rules.

(b) Resultant vacancies will be open to all the candidates with ranks below the rank of the candidates who vacated the seat for that speciality, in that area and also those candidates who were absent in the earlier selections."

Rule 10(v)(e)(a) mandates that the procedure specified in G.O.Ms.No. 996 Employment & Social Welfare (P) Department, dated 11.11.1975 should be followed in selecting a candidate. In this G.O. it was specified that candidates should be selected for general seat (unreserved seat) in the first instance strictly in the order of merit and thereafter selections should be made for each reserved group separately, in the order of merit.

Rules 11 to 17 deal with post admission aspects like admission Rules, sanction of leave and the like to the students, fees, the powers of the Principals of the Medical Colleges and of the Health University.

The 1997 Rules underwent several amendments over the years all of which are not relevant or material for the purpose of this *lis*. In G.O. Ms. No.719 Health, Medical and Family Welfare (E2) Department, dated 16.12.2003, the 1997 Rules were again amended, *inter alia*, introducing the 100-point Roster system for making reservations

to seats in Post Graduate medical admissions. By the date of G.O. Ms. No.719, pursuant to an Act of the Legislature of the State of Andhra Pradesh (Act 20 of 2000), the members of Scheduled Cates were classified into 'A' 'B' 'C' and 'D' categories and relevant rules to effectuate such categorisation were also issued. The 100 point roster was incorporated into the 1997 Rules, by the amendment to it by G.O. Ms.No. 719, included the four-fold classification of Scheduled Castes. The four-fold categorisation of Scheduled Castes, has since been struck down by the Supreme Court of India in ***E.V. Chinnaiah v State of AP and Others ()***. Therefore all members of Scheduled Castes in the State of Andhra Pradesh, now constitute a composite class.

Thus, the 100 point Roster was introduced and applied for PG Medical Courses commencing from the academic year 2003-2004.

(E) Amendments/Partial Modifications, *inter alia*, to the 1997 Rules – G.O.Ms. No.44, Health, Medical and Family Welfare (E.2) Department, dated 25.2.2005 :- (for short 'the 2005 Rules')

These rules are issued in purported exercise of powers conferred by Sec.3 r/w Sec.15(1) of the 1983 Act.

Rule-I mandates the Health University to prepare a "***Seat Matrix***" by –

i. Arranging all the courses in alphabetical order and under each course the colleges should again be arranged in alphabetical order separately for the 3 University areas (under the Presidential Order viz., Andhra University, Osmania University and Sri Venkateswara University areas) and State-wide seats;

ii. Allotting Roster points to all the available seats duly mentioning women and PH points as applicable as per the rules, separately to the three university areas and State-wide seats, continuing from the point where it ended in the previous year (meaning a running roster – year to year);

iii. In the lists so prepared, allocating the first 6 points as local seats and the 7^{th} as unreserved seat (as per the Presidential Order);

iv. All unreserved seats specifying the course, college and roster point category from these three university areas and State-wide seats should then be culled out and clubbed category-wise and lists prepared for open and for each of the reserved category seats, placing the universities in alphabetical order;

v. For State-wide seats, for the remaining 85% seats, the instructions issued

in paragraph –6 of G.O.Ms. No.453, G.A. (SPF-B) Department, dated 3.7.1974, should be followed i.e., the ratio of 42:36:22 among the Andhra University, Osmania University and Sri Venkateswara University area, local candidates respectively;

vi. The procedure for filling in inservice vacancies is specified (this aspect is not relevant for the purpose of this *lis)*;

vii. The following lists are to be culled out from the main matrix:

a. Unreserved and State-wide open seats that are open for all university areas and open to all communities shall be filled as per State merit list;

b. Unreserved and State-wide reservation seats that are open for all university areas but to be filled in only by reserved candidates belonging to concerned categories shall be filled category wise and State merit;

c. Local area open seats (for each university) open to all communities and shall be filled as per the local area merit;

d. Local area reservation seats (for each university) shall be filled with reserved category candidates concerned as per the local area reserved category wise merit list.

Rule-III sets out the counselling process for reserved candidates who have secured merit ranking that enables them to secure a seat in the unreserved category. Being relevant Rule-III is extracted:

"III. Meritorious Reserved Candidates:

i) All reserved category candidates who qualify in the open (general) merit list shall necessarily attend the counselling for open category seats and shall exercise his/her option and then if, he/she desires to opt for either a different course or college, he/she may attend the counselling meant for that reserved category, provided:

a. If he/she is not present or if present, fails to refuse to take a seat in open category, he/she shall not be allowed for attending the counselling for reserved seats.

b. He/she cannot opt for a course or college under reservation, if the same combination of course and college is available in open category."

Rule-IV sets out the counselling procedure and to the extent relevant and material is extracted below:

" IV Counselling Procedure:

i. The seats reserved for women/in-service/PH candidates as applicable under each category of OC/SC/ST/BC-A/BC-B/BC-C/BC-D will be available to all the candidates within the category. In other words, the seats earmarked for women, PH and in-service shall be pooled with the category concerned for providing wider choice. They shall be called for counselling as per roster points and they shall choose from among the courses/colleges available for that entire category. For ex: PH reservation is available only under OC category and a PGH candidate when called for counselling at his/her roster point can opt for any of the courses available under OC category.

The order of counselling should be as follows:

ii. All the unreserved and State-wide seats have to be filled first as follows:-

e. Open seats showing women, in-service & PH roster points placed university alphabetical order wise shall be filled up first.

f. Reservation seats for each category showing women & in-service roster points placed university alphabetical order wise shall then be filled up thereafter, based on State-wide category merit lists.

iii. While filling up 85% of the State-wide seats (presently balance 19 seats), it shall be ensured that the ratio prescribed for the three universities as at I (v) above is maintained.

iv. After the unreserved and State-wide seats are all filled up, the local area seats shall be filled up. While filling up local area seats (Andhra University/OU/SVU areas), the open category seats shall be filled up first, as per local area merit. Where after, the reservation seats shall be filled as per the concerned local area reservation category merit.

v. The counselling for each of the reserved category seats should commence, only after filling up of open category seats.

vi. If any merit candidate belonging to SC/ST/BC category, after attending the open merit counselling and exercising his/her option, opts to take a different course or college in the reservation category (as per roster), the seat so vacated by this candidate should be filled in by next meritorious candidate belonging to that particular reservation category only. (As per Principles laid down by the Hon'ble Supreme Court in Ritesh R.Sah case, AIR 1996 SC 1378, Hon'ble High Court in W.P.No. 26404 of 1999 and W.A.No. 795 of 1999 relating to admissions in NTR University of Health Sciences and as per G.O.Rt.No. 550, dated 30-07-2001, Higher Education (Executive Council-2) Department, Government of Andhra Pradesh).

vii. If a SC, St, BC candidate gets selected under “unreserved open or unreserved reservation category” and if he/she opts for a different course or college under “reservation category” of his/her respective local area, the resultant vacated unreserved seat should be allotted to the same category candidate, in order of merit.

viii. If SC, ST, BC candidate gets selected under Local area open category and if he/she opts for a different course or college under “reservation category” of his/her respective local area, the resultant vacated local area seat should be allotted to the same local area reserved category candidate, in order of merit.

ix. The vacated seat of a meritorious reserved category candidate (from the open category) should be immediately added to the seats available under that reserved category for being filled up by the next meritorious candidate from that category. For example: if a ST meritorious women/service candidate from open category, vacates a seat in the open category, the same shall be made available to the next meritorious ST women/service candidate as case may be, who will however choose from among the courses available for ST category including the vacated seat course.”

The uncontested factual scenario:-

a. The Health University, for the current academic year (2005-06) conducted one common entrance test for all Post Graduate Medical Degree and Diploma Courses of study comprising Clinical, Para–clinical and Non-clinical courses;

b. After the finalisation of the results, the candidates were intimated the ranks secured by them in the entrance examination;

c. The 100 point roster (hitherto applicable to Public Employment area) was applied to Post Graduate Medical admissions also;

d. All the several courses of Post Graduate Medical study, Degree and Diploma Courses together, whether Clinical, Non-clinical or Para–clinical, were arranged in an approximation of an alphabetical order for each of the three university - local areas;

e. For each university local area and in each distinct course of study, and for Degree and Diploma courses together, the seats available were again arranged in the alphabetical order of the college in which the seats

were available;

f. To this para–alphabetically formatted 'seat matrix', the 100 point roster was applied from a roster point next after the roster point ending in the previous year. For the current academic year, the roster point for the Osmania University area commenced at 773, meaning at point 73 in the 7th cycle. The roster points were applied to all the available seats in each university local area duly incorporating the several components of 'non-local area reservation' i.e., S.Cs., S.Ts., B.Cs., P.H. and Women. Six (6) successive seats were treated as 'reserved' for local candidates and the 7th as 'un-reserved', to accommodate the Presidential Order local area reservation requirements.

g. Even for the 15 per cent 'un-reserved' seats (as per the Presidential Order) including for the 15 per cent in the State-wide courses, the reservations other than the local area reservations were applied;

h. At the counselling, wherever any merit candidate belonging to a 'reserved category' such as SC/ST/BC, after attending the open merit counselling and exercising his option, opts for a different course or a college in the 'reservation category' (as per the roster), the open seat so vacated is appropriated to the particular 'reserved category' of the candidate who vacated the seat. Such seat in the specific course of study and college is reserved for being filled up by another candidate belonging to the same 'reserved category' and is excluded for choice to the next candidates in the order of merit. This procedure is adopted in purported compliance with the requirement following the decision of the Supreme Court in ***Ritesh R. Sah vs. Dr. Y.L. Yamul ()***.

The challenge:-

Succinctly, the grievance of the petitioners and the challenge to the rules and the procedures for admission followed by the State of Andhra Pradesh and the Health University, is predicated on the following contentions:

a. That the reservation provided for women (33 per cent) is invalid as thereby the 50 per-cent permissible ceiling limit on reservations, is transgressed;

b. Three (3) per cent reservation provided for the Physically Handicapped (PH) is invalid, as persons with visual and hearing impairment are not eligible to pursue Post Graduate Medical courses and there is thus no justification for reserving three (3) per cent seats only to the remaining categories of the Physically Handicapped;

c. Each course of Post Graduate Medical study is distinct. Even amongst Post Graduate Medical Degree Courses or Diploma Courses, which are again distinct from each other - both in academic quality and the duration of these courses, there are clear-cut, and academically well recognised distinctions such as Clinical, Non-clinical and Para-clinical. Clubbing the several distinct and dissimilar courses in Post Graduate Medical studies, for the purpose of applying the 100-point roster constitutes an irredeemably vagrant and irrational State action that serves no legitimate and compelling governmental purposes. Such clubbing unconstitutionally and illegally deprives both the local candidates who are entitled to the protection of the Presidential Order as well as the 'un-reserved candidates' who have the guaranteed equal opportunities protections. In particular, the top ranking candidates of the Common entrance test are illegally denied the legitimate choice of a Post Graduate Medical Course of study. The several courses of Post Graduate Medical studies constitute specialised, distinct and dissimilar academic disciplines. Treating them as one only for applying the 100-point roster offends the principles of equal opportunity and constitutes invidious classification. Even apart from the illegality of clubbing, in the very application of the *'Seat Matrix'* format and the 100 point roster, the Presidential Order is violated as seats in excess of what is permitted under the Presidential Order have been reserved for local candidates, to the detriment of the unreserved sector.

d. The procedure and principles of 'sliding' whereby an open merit seat in a course of study or college, vacated by a merit candidate belonging to the 'reserved candidate', upon his choosing a different course of study or college in a 'reservation category', is reserved to be filled up only by another candidate belonging to the same 'reserved category', is irrational and impermissibly impacts the rights and legitimate

expectations of other merit ranking candidates, some of whom may include candidates belonging to reserved categories but who are entitled to compete to a course of study and college of their choice on the basis of their merit ranking without having to rely on the benefits of affirmative action.

e. The "unreserved seats" (under the Presidential Order) cannot be subjected to other (non-local area, affirmative action) reservations. Providing reservations for SC, ST, BC, PH and Women, in the 15% of "unreserved seats" is illegal.

The Defence:-

Responding to the petitioners' challenge to the admissions procedure, the official respondents contend:

(A) **Women**:- That the State has power to make reservations for women. Such reservations are constitutionally permissible (Art. 15(3); Sec. 3(2) of the 1983 Act empowers the State to make reservations including for women. Such reservations, which are in the nature of horizontal reservations, cannot be computed *per se* with the other (vertical) reservations for calculating the 50% limit (the permissible percentage of reservations).

(B) **Physically Handicapped**: - Reservation of 3% seats for Physically Handicapped even where visually and hearing impaired persons are ineligible for pursuing PG Medical courses, is valid and permissible.

(C) **Grouping**:- The Presidential Order mandates local area reservations in every course of study. "Course of study"
is not defined. The official respondents have decided upon and conducted one common entrance test for all PG Medical courses irrespective of the several courses/disciplines of study including PG Degree and Diploma courses. Each of the distinct courses/disciplines of PG Medical study, separately in the Degree and Diploma courses have a limited number of seats. There are numerous components of reservations such as local area reservation, reservation for SC, ST and BCs, Women and the Physically Handicapped. Fitment of all these several reservations in the limited number of seats, if each distinct PG Medical course of study/discipline

were separately considered, is difficult in practice. Hence, for the convenience of accommodating the several reservations one common entrance test was conducted. All the courses of PG Medical studies - Degree and Diploma, were treated en bloc for applying the roster. Broadly and in the context of the complexity of accommodating the several categories of reservations, the grouping together of the several courses of PG Medical studies and applying the 100 point roster to the seats in such en bloc group of courses, has achieved a fairly approximate and equitable distribution of the seats to the various categories of 'unreserved', open and reserved categories of candidates. The grouping together of the several courses of PG Medical studies is a policy choice of the State and the Health University and is not amenable to judicial review. The wisdom of such choice is exclusively within the Legislative and Executive domain and is a prohibited area for judicial review. The grouping of the several courses of PG Medical studies is also consistent with the law declared by a Full Bench of this court in ***Koganti Jayakrishna and another v State of Andhra Pradesh and another()***. There has been no excess reservation in favour of 'Local Candidates'.

(D) **Sliding**:- The procedure adopted for according the benefit of 'sliding' is consistent with and consequent upon the judgment of the Supreme Court in ***Rithesh R. Sah's*** *case* (3 supra) and a Full Bench of this Court in ***Koganti Jayakrishna****'s case* (4 supra). The 1997 Rules were modified by the 2005 Rules, which provide for the procedure for 'sliding' for the class of reserved candidates, who are entitled to be considered in the open merit seat vacated by a merit candidate belonging to the reserved category. This prescribed method and procedure for 'sliding' is being followed and cannot be successfully questioned.

(e) Reservation for SC, ST, BC, PH and Women in the 15% of "unreserved seats" also, is not prohibited under the Presidential Order, as is within the executive choice of the State.

The principal issues for determination :-

1) Whether the reservation quota to the extent provided for women, is valid?

2) Whether the percentage of reservations provided for the Physically Handicapped, is valid?

3) (i) Whether, contrary to the Presidential Order, there is excess reservation in

favour of the “Local Candidates”, even under the “Seat Matrix” followed by the official respondents?

(ii) Whether the clubbing together all the several Post Graduate Medical Courses of study and of the Degree and Diploma courses, is valid?

4) Whether the practice and procedure as provided and followed, for sliding of merit candidates belonging to reserved categories, is valid?

The analysis and the resolution:-

From the pleadings and the debate at the Bar, it appears that the rules made and the procedures followed by the State of Andhra Pradesh and the Health University, in the matter of admissions to Post Graduate Degree and Diploma courses is the result of an endeavour to accommodate the several competing, complex and often, at least facially, incompatible claims of the several sectoral interests. The impugned State action should be analysed in a legal context where legal instruments of varying efficacy operate to de-limit, instruct and inform the powers of the State and the Health University.

The paramount and overbearing of such legal instruments are the Constitution and the Presidential Order. Article 14 of which Article 15 is a facet, guarantees equality of opportunity and the equal protection of the laws and permits employment of the classification doctrine as a ‘tool’ to effectuate the guaranteed right to equal opportunities. Insofar as the State of Andhra Pradesh is concerned (for historical and other reasons to be briefly set out hereinafter), the fullness of the equality injunctions under Articles 14 and 15 are muted *protanto* to the extent excluded by the provisions of Article 371-D and the Presidential Order made thereunder [Art.371-D(10)].

The Historical background of the enactment of Article 371-D:-

The erstwhile State of Hyderabad comprised three areas: Telangana, Marathwada and Karnatak. In 1919, the Nizam issued a Firman promulgating the Mulki Rules, which were confirmed by another in 1949. The Mulki Rules, *inter alia*, provide fifteen (15) years residence qualification in the State as an essential qualification for public employment. In 1955, the Rajpramukh, in exercise of his powers under the proviso to Article 309 of the Constitution, framed the Hyderabad General Recruitment Rules, 1955 in supersession of all the previous rules on the subject. These rules, *inter alia*,

ordained that a domicile certificate is necessary for appointment to a state or subordinate services (evidencing residence in the State for a period, not less than 15 years). On 01-11-1956, the erstwhile Hyderabad State was trifurcated. The Telangana region became a part of the newly formed State of Andhra Pradesh; the Marathwada and Karanatak regions eventually became parts of Maharashtra and Mysore states.

The State of Andhra Pradesh was formed on 01-11-1956. Section 3 of the Public Employment (Requirement as to residence) Act, 1957 (Central Act 44 of 1957) enabled the Central Government to make rules in respect of certain classes of public employment in certain areas. Pursuant to the power available under Section 3 above, the A.P. Public Employment (Requirement as to residence) Rules, 1959 were made by the Central Government, whereunder, *inter alia*, residence requirement for a period of not less than fifteen (15) years within the Telangana region of the State was made the eligibility criterion for certain classes of public employment available within the Telangana area of the State. The Supreme Court in ***A.V.S.N. Rao Vs. State of A.P.()*** declared Section 3 of the Public Employment (Requirement as to residence) Act, 1957 as also Rule 3 of the 1969 Rules as *ultra vires* the Constitution on the ground that prescription of residence requirement within a State was beyond the legislative competence of Parliament in view of the provisions of Article 16 (3) of the Constitution.

Thereafter and over time, there were agitations as also separatist claims. The essential grievance was as to economic disparities between the different regions in the State of Andhra Pradesh, which were perceived to have provided unequal unemployment and educational opportunities to the people living in the different regions of the State. A concerted political effort was thereupon made to find enduring answers to the festering grievances, with a view to achieving a fuller emotional integration of the people of Andhra Pradesh. On 21-09-1973 a political solution, generally known as the 'Six-Point Formula', was evolved. As this formula found acceptance by the State Government also, to provide the necessary constitutional authority for giving effect to the provisions and solutions identified in the Six-Point Formula, the Constitution (32nd Amendment) Act, 1973 was enacted incorporating Article 371-D into the Constitution.

The constituent impetus for enacting Article 371-D is - (a) to promote accelerated

development of the backward areas of the State of Andhra Pradesh so as to secure the balanced development of the State as a whole; and (b) to provide equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public services. To these constitutional ends, Article 371-D empowers the President, by order, to provide for equitable opportunities and facilities for people belonging to different parts of the State in matters of public employment and of education. Clause (2) of the Article, complimentary to Clause (1) particularises the matters which an order made under Clause (1) may provide. Under Clause (2)(a), the Presidential Order may require the State Government to organize any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State and allot in accordance with such principles and procedure as may be specified in the order, the persons holding such posts, to the local cadres so organized.

Under Sub-clause (b), the Presidential Order may specify any part or parts of the State, which shall be regarded as the local area—

> "(iii) for the purposes of admission to any University within the State or to any other educational institution, which is subject to the control of the State Government. Sub-clause (c) of Clause (ii) enables the Presidential Order to specify the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made – (ii) in the matter of admission to any such University or other educational institution referred to in sub-clause (b) as may be specified in this behalf in the order, to or in favour of candidates who have resided or studied for any period specified in the order in the local area in respect of such cadre, University or other educational institution, as the case may be."

Clause (10) enacts over-riding effect to the provisions of Article 371-D and any order made by the President therein *qua* anything in any other provision of the Constitution or in any other law for the time being in force.

The Constitution is a living and pulsating instrument, which provides the framework for the governance of the dynamic social, economic, political and other demands of our complex and plural society. In the interpretation of a constitutional instrument, the Court must be alive to the underlying values of its provisions and in respect of provisions such as those of Article 371-D, also to its legislative history, the social,

economic and political compulsions which engendered the amendatory exercise and the perceived evil that was sought to be remedied thereby. Where the words employed in a constitutional provision are open textured, *pluri-signative* or evocative, the court is required to go behind or even beyond the arid, literal or lexicographic words and meaning of the enactment and to look for guidance to well recognized Rules of construction and interpretation.

In the interpretation of constitutional document, it is a settled principle that regard must be had to the purposes underlying the provision and that the words used in such an instrument must be construed conscious of the fact that they are the expressions occurring in an instrument intended to address substantive issues and are not mere technical prescriptions to be understood by a resort to a dictionary. The expression 'every course of study' in paragraphs No. 5 and 6 of the Presidential Order must, therefore, be understood in the light of the historical, social, economic and political compulsions, which necessitated the Constitution amendment.

Issue No.1:

Women's Reservation:

Article 15(3) enables the State to make special provision for women and children. Affirmative action including by way of reservation in favour of women is thus enabled by the equality injunctions to the Constitution and by the explicit provisions of Article 15 (3).

Insofar as public employment in the State of Andhra Pradesh is concerned, the Rule of 'special representation (reservation)' is contained in Rule 22 of the Andhra Pradesh State and Subordinate Service Rules. In G.O.Ms. No. 65 General Administration (Services-D) Department, dated 15-02-1997 amendments were introduced, *inter alia*, enabling provision of reservation for women. The existing 100 point roster was also modified to incorporate reservation for women provided in G.O.Ms.No. 65. Rule 22 (a) of the State and Subordinate Service Rules, was also amended in this Government Order and provided for the method in which the preference to women to the extent of 33-1/3 per cent should be considered. Though the 1997 Rules (pertaining to the admissions to Post Graduate Medical courses) did not either enable or mandate reservations in favour of women, in the 2005 Rules, Rule-V provided for reservation for women 'as per G.O.Ms.No. 65 General Administration (Services-D) Department dated 15-02-1997'. There is, therefore, a

clearly discernable policy decision of the executive and the mandate contained in the statutory instrument (2005 Rules), that authorise providing reservations for women in Post Graduate Medical Education.

Another contention urged on this aspect is that providing 33 1/3 per cent reservation for women has the effect of transgressing the 50 per cent limit of permissible reservations. The contention goes: there are already reservations to an extent of 46 per cent in favour of the Scheduled Castes, the Scheduled Tribes and the Backward Classes and if 33 1/3 per cent of the seats reserved in favour of women, the actual number of un-reserved seats would fall below the 50 per cent mark.

The above contention does not merit acceptance. In ***Indra Sawhney Vs. Union of India*** **()**, Jeevan Reddy,J speaking for himself, M.H. Kania, C.J., M.N. Venkatachaliah, and A.M. Ahmadi JJ (the majority) pointed out, in the context of public employment, that reservations contemplated under Clause (4) of Article 16 should not exceed 50 per cent. However, the learned Judge clarified that this limit of 50 per cent applies only to reservations under Article 16 (4) in favour of the Backward classes and that there are two types of reservations which for convenience could be referred to as 'vertical reservations' and 'horizontal reservations'. The Supreme Court considered the reservations in favour of Physically Handicapped as belonging to the species of 'horizontal reservation' relatable to Article 16 (1). The court pointed out that persons selected against such quota (Physically Handicapped) would be placed in the appropriate category i.e., SC/ST/BC/OC by necessary adjustments being made and that even after providing such horizontal reservations, the percentage of reservations in favour of the Backward Classes of citizens remains the same. What was delineated by the Supreme Court above in the case of reservations under Article 16 and the principle that horizontal reservations do not have the propensity or the effect of insular exclusion, equally holds true for reservations made in favour of women. Reservations for women also have a horizontal signification. Women provided affirmative opportunities are fitted into the several categories of reservations and the un-reserved category such as SC/ST/BC/OC. There is thus no increase in the quantum of reservation to the totally exclusion of people belonging to other (un-reserved) communities. The 33-1/3 per cent reservation provided for women in admission to Post Graduate Medical Courses, therefore, does not fall foul of the principle of ceiling on reservations established by a settled catena of precedents

and reiterated in ***Indra Sawhney's*** *case* (6 supra). The challenge to reservations in favour of women, is rejected.

ISSUE No. 2:

PHYSICALLY HANDICAPPED:

India is a signatory to a Proclamation on the full participation and equality of people with disabilities in the Asia and Pacific regions, adopted at a meeting convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing in 1992. To effectuate the purposes of the Proclamation was enacted 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act1 of 1996) (for short 'the 1995 Act'). The 1995 Act has been notified to come into force with effect from 07-02-1996. Section 39 of the 1995 Act mandates all government educational institutions and other educational institutions receiving aid from the government to reserve not less than 3 per cent seats for persons with disabilities. Section 2 (i) defines 'disability' to mean – blindness, loss of vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness. Some of these enumerated disabilities are further defined in the 1995 Act, which are not however necessary to be considered for the purposes of this *lis*. This 1995 Act is a legislation by the Parliament, made for giving effect to an International agreement (Art.253). Section 39 of 1995 Act, as already noticed, mandates that not less than 3 per cent of the seats be reserved in favour of persons with disabilities, in the institutions specified in the provision. The 3 per cent prescribed is not the ceiling on reservations, but the minimum percentage of reservation that should be provided for persons with disabilities. These reservations also constitute State action to ensure equal opportunities guaranteed under Articles 14 and 15 of the Constitution. In the light of the constitutional and statutory position, provision of a reservation of 3 per cent to persons physically handicapped, cannot be faulted. The reservation for the physically handicapped is also a species of 'horizontal reservation' and, therefore, cannot be computed to the percentage of 'vertical reservations' provided by the State.

The Central Government, in the Ministry of Health and Family Welfare, by a letter dated 12-05-2004, addressed the Secretaries of Health/Medical Education of all States, sensitising them to the requirement of providing 3 per cent reservation for the physically challenged and persons with disabilities. This letter stated that for

admissions to medical courses, the Medical Council of India in its letter dated 14-07-2003 had issued guidelines for filling up of reserved seats for persons with disabilities. As per the circular of the Medical Council of India, reservation should be provided only in respect of physically handicapped persons with 'locomotor disease' and that too with disability of lower limbs between 50 % to 70%. The letter also informed that guidelines for filling up of reserved seats for persons with disabilities in dental courses would be issued separately after receipt of recommendations from the Dental Council of India. The Ministry of Health and Family Welfare, Government of India, in a subsequent letter dated 08-07-2004 addressed the Ministry of Social Justice & Empowerment, clarifying a query addressed by the Health University as to whether the reservation of 3 per cent for the Physically Handicapped applies 'vertical' or 'horizontal' reservations. The Ministry of Health, Government of India, clarified that the reservation is 'horizontal' in character.

Among the persons with disabilities those with visual and hearing impairment cannot pursue a course in medicine having regard to the rigour of the academic discipline involved, which renders such disabilities incompatible with the pursuit of medical education. Therefore, the Medical Council of India, had contoured the matrix of reservations for the Physically disabled limiting the benefit to such classes of the physically disabled who could nevertheless pursue medical education. The clarifications/guidelines issued by the Medical Council of India constitute a classification rationally related to the object of pursuing medical education even by the physically handicapped and in the context of the 1995 Act. The mandate of Section 39 of the 1995 Act that not less than 3 per cent should be provided for the physically handicapped, is a mandate that warrants unswerving compliance by all Government and State instrumentalities. The provision of 3 per cent reservation for the physically handicapped, which is 'horizontal' in character and non-additive in effect, to post graduate medical education, therefore suffers from no infirmity. The challenge by the petitioners to the percentage of reservation for the physically handicapped is therefore rejected.

ISSUE No.3:

Grouping together of all Post Graduate Medical Courses including Degree and Diploma courses:

The Presidential Order in greater detail :

Paragraph-2 (a) of the Presidential Order defines 'available seats' in relation to any course of study, to mean the number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State. Paragraph-2(b) defines 'local area', to mean a local area, for the purpose of admission to such university or educational institution, as specified in paragraph-3. Paragraph-2 (c) defines 'local candidate' to mean one who is qualified under paragraph-4 as a local candidate in relation to such local area. Under Sub-paragraphs (e) and (f) 'state-wide educational institutions' and 'State-wide universities' are either specified in the schedule to the Presidential order or in the definition itself. Under paragraph-3 of the Presidential Order, the State is divided into three local areas, in common parlance known as the Andhra University local area, the Osmania University local area and the Sri Venkateshwara University local area, otherwise than a State-wide university or a State-wide educational institution. We are not, in this case, concerned with the technicalities of the definition of a 'local candidate', who is defined in paragraph-4 with reference to study in an educational institution or residence in a local area as delineated in paragraph-4.

Paragraph-5 of the Presidential order deals with the reservation in 'non-State-wide universities and educational institutions'. It is mandated in paragraph-5 (1) that admission to 85 per cent of the available seats in every course of study provided in any of the specified universities or any educational institutions (other than a State-wide university or State-wide educational institution) that are subject to the control of the State Government, shall be reserved in favour of the local candidates in relation to the local area in respect of such university or other educational institution (emphasis added). Paragraph-5 (2) specifies that while determining the number of seats to be reserved in favour of local candidates under Sub-paragraph (1), any fraction of a seat shall be counted as one, provided that there shall be at least one 'un-reserved' seat.

Paragraph-6 of the Presidential Order deals with 'reservation in State-wide universities and State-wide educational institutions'. It is specified that admissions to 85 per cent of the available seats in every course of study provided by a State-wide university or a State-wide educational institution shall be reserved in favour of local

candidates and allocated among the local candidates in relation to the local areas specified in Sub-paragraphs (1) to (3) of Paragraph-3 in the ratio of 42:36:22 respectively (emphasis added). The proviso to paragraph-6 (1) enacts that the provisions of sub-para(1) shall not apply in relation to any course of study in which the total number of available seats does not exceed three (3). Paragraph-6(2), like paragraph 5(2) specifies that in determining the number of seats to be reserved in favour of local candidates under paragraph-6 (1), any fraction of a seat shall be counted one provided that there shall be at least one 'un-reserved' seat. Sub-paragraph (3) specifies further details to work out fractions while apportioning the reserved seats among local candidates in relation to different local areas.

Paragraph-9 reiterates the provisions of Clause (10) of Article 371-D of the Constitution i.e., that the provisions of the Presidential Order shall have over-riding effect. Paragraph-10 clarifies that nothing in the Presidential Order would effect the operation of provisions made by the State Government or other competent authority for providing, in admissions, reservations in favour of women, social and educationally backward class citizens, the Scheduled Castes and the Scheduled Tribes, insofar as such provisions are not inconsistent with the order.

The general complaint of the petitioners is that the application of the 100 point roster to the 'available seats' in all the Post Graduate Medical Degree and Diploma courses together with the 'seat matrix' protocol clearly subverts the mandate of the Presidential Order. The petitioners challenge to the clubbing of the several courses of Post Graduate Medical studies regardless of substantive and academic dis-similarities amongst such courses and oblivious even to the clear distinction between clinical and non-clinical and degree and diploma courses, is a distinct challenge.

At the outset, it must be stated that in the State, no seats are reserved for candidates from outside the State. Therefore, all the seats in the several Post Graduate Medical Courses of study are 'available seats' within the meaning of the Presidential Order. Whether in respect of non-State-wide universities and educational institutions (paragraph-5 of the Presidential Order) or in respect of the State-wide universities and State-wide educational institutions (Paragraph-6), the Presidential Order mandates that 85 per cent of the 'available seats' in every course of study, shall be reserved in favour of 'local candidates'. Sub-paragraphs (2) of both paragraphs-5 and 6 clarify that in computing the number of seats to be reserved under Sub-

paragraphs (1) of paragraphs 5 or 6, any fraction of a seat shall be counted as 'one' provided however that there shall be at least one 'un-reserved' seat. While under paragraph-5, 85 per cent of the 'available seats' are required to be reserved for candidates belonging to the local area concerned, under paragraph-6, 85 per cent of the 'available seats', should be reserved for allocation among the local candidates of the three local areas in the ratio of 42:36:22 respectively for the Andhra University, Osmania University and Sri Venkateswara University.

This court has been provided, for its perusal and consideration, a compilation of 'the seat matrix' prepared by the Health University for effecting counselling and eventual admissions to Post Graduate Medical Degree and Diploma Courses for the academic year 2005-06.

The petitioners, challenge the 'Seat Matrix' protocol incorporating the 100 point roster on two grounds:

a. That the 'seat matrix' even as applied is in violation of the Presidential Order; and

b. That the clubbing of all the seats in the various distinct and dis-similar courses of Post Graduate Medical Studies, including the clubbing of Degree and Diploma courses is violative of the text and structure of the Presidential Order.

Issue 3(a) :-

For an analysis for consideration of first part of the challenge above, we assume *ex-hypothesi* that the clubbing of the various distinct courses of Post Graduate Medical studies, including Degree and Diploma courses is inoffensive. Whether in the application of the 'seat matrix' scheme together with the application of the 100 point roster (to this consolidated treatment of seats), the official respondents have yet transgressed the Presidential Order is considered in the following analysis.

All the petitioners predicate their claims, expectations, grievances and the challenge primarily in respect of the Osmania University local area.

The ‘seat matrix’ compilation furnished to this court under an affidavit of the Registrar of the Health University, (insofar as the Osmania University ‘local area’ is concerned), discloses the following:

a. The number of ‘available seats’ in the PG Medical Degree and Diploma courses, clinical and non-clinical in the various courses of study i.e., the total number of ‘available seats’ is 393, of which, 245 are the ‘available seats’, in all the Degree courses and 148 are ‘available seats’ in all the Diploma courses. In the Degree courses, 151 seats are in Clinical courses and 94 in non-clinical. In the 148 seats in the Diploma courses, seats in Clinical disciplines are 133 and in non-clinical 15. The official respondents have considered all the 393 seats as in a singular course of study. The number of ‘un-reserved’ seats (i.e., outside the pale of the provisions of the Presidential Order) so earmarked are 56 while 337 seats are reserved in favour of ‘local candidates’ of the Osmania University local area.

b. Paragraph-5 of the Presidential Order, as already seen, mandates that 85 per cent of the available seats, should be reserved in favour of local candidates and that any fraction of a seat should be counted as ‘one’ provided that at least ‘one seat’ is left ‘un-reserved’. 85 per cent of the 393 ‘available seats’ comes to 334.05. Applying the provisions of paragraph-5 (1) and (2) of the Presidential Order, not more than 335 seats could be reserved in favour of the ‘local candidates’ of the Osmania University area (counting the fraction of .05 as ‘one’). 58 seats should therefore remain un-reserved. In reality, the number of ‘un-reserved’ seats out of the 393 ‘available seats’ in the Osmania University local area, as shown in the ‘seat matrix’ compilation is ‘56’. Thus there is a short fall of ‘2’ un-reserved seats, contrary to the mandate of the Presidential Order.

We have also considered the figures as provided in the ‘seat matrix’ compilation in respect of the Andhra University and Sri Venkateshwara University local areas. In Andhra University local area, the ‘available seats’ are 266, of which, 38 are shown as ‘un-reserved’. Applying the provisions of paragraph-5 (1) and (2) of the Presidential order, the number of seats that could and should be reserved in favour

of ‘local candidates’ is 226.1 i.e., 227. 39 seats should, therefore, be ‘un-reserved’. In fact, only 38 seats are treated as ‘un-reserved’ constituting a short fall of ‘one’ in terms of the Presidential Order.

In the Sri Venkateshwara University local area, the ‘available seats’ are 153. Applying the provisions of paragraph-5 (1) and (2) of the Presidential Order, the seats required to be reserved in favour of the local candidates are 130.05 i.e., 131. The un-reserved seats should, therefore, be 22. Whereas, as per the “Seat Matrix” compilation, furnished by the Health University, the number of seats treated as ‘un-reserved’ is 21 constituting a short fall of ‘one’ in terms of the Presidential Order.

The areas un-encompassed by the provisions of the Presidential Order should conform to other provisions of the Constitution, in particular to Articles 14 and 15. When the Presidential Order ordains reservation in favour of ‘local candidates’ only to the extent of 85 per cent, including prescriptions as to the treatment of fractions, any excess local area reservation by a State or State instrumentality constitutes a reservation on the basis of a sub-State residence requirement without the authority of law and in violation of the equality injunctions of Articles 14 and 15 of the Constitution. Even the 1997 and the 2005 Rules do not authorise reservation in favour of ‘local candidates’ beyond the limits prescribed under the Presidential order. In fact, Rule 4 of the 1997 Rules reiterates that 85 per cent of the seats should be reserved in favour of ‘local candidates’ as provided under the Presidential Order. (emphasis) The immunity to the provisions of the Presidential Order vouchsafed under Clause (10) of Article 371-D extends only to the extent of the ‘local area reservation’ specified in the Presidential Order and not beyond it. Inasmuch as the consequences of the application of 100 point roster coupled with the ‘seat matrix’ system has resulted in a short fall of the ‘un-reserved’ seats and in excess reservation of seats in favour of ‘local candidates in each of the three local areas of the State, and beyond the provisions of the Presidential Order, such excess reservation in favour of ‘local candidates’ do not enjoy the immunity provided by the Presidential Order and these excess reservations must succumb to the equality injunctions of Articles 14 and 15 of the Constitution. The excess number of seats allocated to “local candidates”, being invalid as already said above, the ‘Seat Matrix’, compilation is declared illegal to the extent of the excess reservations in favour of “local candidates”. This is the result de hors the challenge on the ground of

grouping/clubbing of course of study.

Issue No.3-B:

Rule-I of the 2005 Rules, the official respondents claim, a claim substantively consistent with the provisions of the said Rule-(a) permits grouping of all the Post Graduate Medical Courses - Degree and Diploma, Clinical or Non-clinical and their arrangement in an alphabetical order, separately for the three university local areas and for the state-wide seats, for preparation of the 'seat matrix'. As is apparent from the 'seat matrix' compilation furnished by the Health University, this is what has been done. Post Graduate Medical Degree courses (Clinical) such as Anaesthesia, DVL, General Medicine, OMG, Ophthalmology, Orthopaedics, Paediatrics, Psychiatry, RD and TB have been clubbed with Non-clinical courses such as Anatomy, Bio-chemistry, Forensic Medicine, Microbiology, Pathology, Pharmacology, Physiology and SPM. Similarly, Post Graduate Diploma Courses (Clinical) such as DA, DCH, DDVL, DGO, DLO, DMRD, DO, D.Ortho, DPM and DTCD have been clubbed with Non-clinical Diploma Courses – DCP and DPH. Post Graduate Medical Degree and Diploma courses have again been arranged alphabetically with the Diploma courses arranged in an alphabetical order below the Degree Courses also arranged in an alphabetical order. This is how the 'seat matrix' protocol has been followed for the 'non-state-wide' seats in the three university local areas.

For 'state-wide' seats of Siddartha Medical College and Osmania University Medical College (MD-RT) also (in which only Degree courses are reflected) the arrangement in an alphabetical order, with 'clinical' and 'non-clinical' courses, herded together following the alphabetical discipline! The 100 point roster is applied to the seats alphabetically arranged as above in respect of the 'non-state-wide seats' in the three university local areas as also for the 'state-wide seats', commencing from a roster point next to the roster point concluded in the previous academic year. It is this application of the 'seat matrix' procedure coupled with the application of the 100-point roster, that is the principal point of challenge by the petitioners.

The petitioners contend that each Post Graduate Medical Course of study is a

distinct course of study having no nexus (either in academic content, training schedules and procedures, scientific and technical composition of the course or career opportunities) with any other course of Post Graduate Medical study. They further assert that there is a clear-cut, well established and professionally and academically recognized distinction between Post Graduate Degree and Diploma, Courses of study. While the Post Graduate Degree courses are all of three year duration, the Diploma Courses are of only two years. Even among Clinical Degree courses, as would be apparent even to a layperson, strenuously assert the petitioners, between Anaesthesia and Psychiatry, RD and DVL and O&G, there is no affinity, commonality, overlapping or relationship. The petitioners contend that Post Graduate Medical studies are overwhelmingly training and practice oriented with very minimal, if at all, classroom lectures or theory and that the practical and training curricula of each of these courses is insular. The clubbing of such discreet and insular Post Graduate Medical courses, including Degree and Diploma Courses, is not merely patently irrational and arbitrary, but is also subversive of the text and structure of the Presidential order, is the substratum of the petitioners' challenge.

In defence to this challenge, the official respondents contend:

a. That the State and the Health University, have the power and authority, qua the provisions of 1983 Act, the 1997 and the 2005 Rules to conduct a common entrance test and to regulate the process of entrance examination, counselling and admissions;

b. That the State and the Health University have in view of their 'available power and authority' decided as a policy choice to conduct one common entrance test for all the Post Graduate Medical Courses, Degree and Diploma; and have decided that Post Graduate Medical Courses of every description, constitute 'one course of study';

c. That the State has the power and is constitutionally obliged to an affirmative action programme in favour of various dis-advantaged sectoral interests such as the Scheduled Castes, Scheduled Tribes, Backward Classes, Women and the Physically Handicapped. The State is also compelled to provide 'local area reservations' in the light of the mandate of the Presidential Order. The accommodation

of these several and numerous competing claims to affirmative action cannot be accommodated if each distinct Post Graduate Medical Course of study is considered in isolation. The number of seats in each such course is limited rendering it difficult in practice to apply the numerous reservation components, course wise;

d. The 100 point roster was a readily available tool, already evolved in the State public employment area. Such roster could not practically be applied if each distinct Post Graduate Medical Course study, is considered in isolation, on account of the limited availability of seats in each such distinct course of study;

e. Most of the 'sought after' branches/seats were being 'knocked away' by candidates belonging to the 'un-reserved' denominations and only the vacancies left over after the priority choice by these candidates i.e., the less 'sought after' branches and colleges were available to candidates belonging to the 'reserved groups'. It was also perceived that the meritorious reserved candidates were trading with the next in merit 'un-reserved' candidates by the former abstaining from counselling for open vacancies, so as to accommodate the next in merit 'un-reserved' candidates, secure in the belief that the meritorious among the reserved category candidates would again be called for counselling for the reserved vacancies. On account of these practice, the reserved vacancies were being appropriated by the meritorious reserved candidates (who ought to have chosen the un-reserved seats and colleges), thereby depriving and denying the benefits of even a limited choice of 'sought after branches/seats/colleges' to the relatively less meritorious reserved candidates.

The question is whether the 2005 Rules, the practice and procedure adopted by the administrative agencies (the State Government and the Health University) are compatible with the extant and governing instruments that regulate admissions to the Post Graduate Medical Courses of study in the State of Andhra Pradesh. If they are substantively and fundamentally incompatible, the claimed altruistic or benign motives of the administrative agencies would not legitimise the rules, the practice and the procedure. This is the essential principle of a rule of law Republic.

The Presidential Order is the dominant statutory instrument, which to the extent and the area occupied by its provisions over-rides and over-bears the other provisions of the Constitution, and any other legislation, subordinate legislation, regulation or order contrary to its provisions (Article 371-D(10) and paragraph-9 of the Presidential Order). The powers and authority of a State or its instrumentality to provide affirmative action programmes including by way of reservations, are limited by the requirement that such programmes be compatible and consistent with the provisions of the Presidential Order (Paragraph-10 of the Presidential Order).

The question is what is the meaning of and content of the phrase 'every course of study' employed in paragraphs-5 and 6 of the Presidential order, which mandate 'local area reservation' in non-state-wide and state-wide universities/educational institutions respectively?

The expression 'every' connotes all individual courses of study without exception. The word 'study' too bears a precise connotation - the exertion for acquiring of knowledge. The meaning of this expression is further processed and refined in the Presidential Order. Explanation (i) in Paragraph-4 defines an 'educational institution' to mean an educational institution recognized by the State Government, a University or other competent authority. Paragraph-3 which defines the expression 'local area' also clarifies that the provisions of the Presidential Order are applicable to educational institutions which are subject to the control of the State Government. Paragraph-11 excludes the operation of the Presidential Order to primary or secondary schools, correspondence courses, part-time courses of such private institution, university or other educational institutions, the latter for the benefit of employed persons and to courses of study at the Army Dental College, Secunderabad. In itself, the word 'course' means: (a) a series of lectures or lessons in a particular subject; (b) a route or direction to be followed; (c) The way in which something progresses or develops and (d) the procedure adopted to deal with the situation (Concise Oxford English dictionary). The word 'course' is thus pluri-signative. Consequently, the phrase 'course of study' must be assumed to be open textured and ambiguous. A word or phrase is said to be ambiguous, when it has more than one meaning or different shades of meaning.

In the context of such ambiguity as to the meaning of the phrase 'course of study' in the Presidential Order the State and the Health University contend that the phrase must mean whatever the State and the Health University decide it should mean. Since they have decided that all the Post Graduate Medical Courses comprise 'one course of study', the application of the 'seat matrix,' by grouping/clubbing of the Degree and Diploma, Clinical and Non-clinical - distinct, dis-similar and separate Post Graduate medical Courses of study, is valid.

The above underlying premise of the State is patently fallacious and ignores the enacting history of Article 371-D, the social, economic and political compulsions that have given birth to this provision and the signals that emanate from the conferral of the power (to make a Presidential Order) on the President [Clauses (1) and (2) of Article 371-D]. We have earlier noticed that the 32nd constitutional amendment is the product of a constituent exercise to find enduring answers to the festering grievances of the people belonging to different regions in the State of Andhra Pradesh and to achieving a fuller emotional integration of the people of the State. The inference is compelling, that in the considered view of the Parliament (assembled in a constituent jurisdiction) the remedy to the grievance is possible only when the power to administer the affirmative action measures is conferred on an authority high in constitutional stature and beyond the normative pressures and compulsions of majoritarian interests. This inference is compelling when considered in the light of the fact that the power to identify the remedies and solutions is neither vested in the State Legislature nor even in the Federal Legislature, but is consecrated to the President. Though the President, in formulating an order in terms of the powers under Article 371-D (1) and (2), exercises power on the aid and advice of the Union Council of Ministers (Article 74), there is nevertheless a broad measure of insulation from the majoritarian influences that accompany the normal Legislative and executive processes under the Constitution. We are of considered view that this analysis best comports with the enacting history, the setting and content of the provisions of Art. 371-D. In our considered view, in the light of the context and structure of Article 371-D, the enacting history of this Article and the Authority on which the power to frame a Presidential Order is conferred, it must logically follow that the provisions of the Presidential Order have a content and meaning, independent of how the State or its administrative agencies construe the

Presidential Order. To hold otherwise, would dilute and negate the substantive efficacy of the scheme of the constitution as expressed in Article 371-D. If the provisions of the Presidential Order are to mean whatever the State decides they should mean, the mischief, the remedy of which was the impetus for enacting of Article 371-D, is entrusted back to the care of the State Government and/or its administrative agencies, for identification and administration of the remedies. The Constitution (32nd Amendment) would be an exercise in futility. Such construction of the scheme of Art.371-D and of the Presidential Order would negate the seminal premises of the Constitution 32nd Amendment.

It also requires to be considered whether in practice the State Government had evolved any uniform definition of the expression “course of study”; at least in professional courses of higher education. As is apparent from the case on hand, the State Government and the Health University consider all Degree and Diploma, clinical and non-clinical Postgraduate Medical disciplines as one course of study and that too for claimed pragmatic reasons of catering to the affirmative action requirements of the numerous sectoral interests.

The AP Agricultural University by the AP Agricultural University (Admission to P.G. Courses at M.Sc. Level) Regulations, 1989, while processing applications for admission to P.G. Courses in the faculty of Veterinary Sciences for academic year 1994-95 had treated 15 courses of study in the faculty of veterinary science as independent courses of study. This distinct treatment of the different courses in the faculty of Veterinary science and the procedure of applying the Presidential Order separately to each course of study, was challenged in ***T.S. Ramesh Chandra v A.P. Agricultural University ()***. The petitioner contended that the total number of seats in the faculty of veterinary science should have been considered together and the Presidential Order applied, to all the seats but not to the individual courses of study, in the faculty of Veterinary sciences. A learned single Judge of this court, in the judgment supra repelled this contention, holding that the faculty of veterinary science factually consists of 15 different courses of study and that the University acted legitimately and in conformity with the provisions of the Presidential Order, in treating each distinct course of study in the faculty of Veterinary sciences separately and applying the provisions of the Presidential Order on that basis.

In ***Koganti Jayakrishna***'s case (4 supra) a common entrance test 'EAMCET' was conducted for the academic year 2001-2002 and admissions to Engineering courses were made treating various disciplines of Graduate Engineering Course (BE/BTech) like Civil, Electrical, Electronics and Information Technology as one for making admissions, including for the purpose of applying the Presidential Order local area reservation and other reservations for SC, ST,BC and the like.

From the above instances, it is apparent that there is no uniform conduct or treatment by the State. The State and its academic/administrative agencies are seen to have adopted different yardsticks and concepts in defining the expression 'course of study' in different situations even in professional courses.

In any view of the matter we are of the view that the expression 'course of study' in Paras 5 and 6 of the Presidential Order must of necessity have a meaning and import independent of how the State Government and its administrative agencies periodically choose to understand and construe the said expression. Once the contours and meaning of the expression 'course of study' as employed in the Presidential Order are identified, on application of the appropriate and relevant principles of statutory interpretation, such interpretation governs the meaning of the expression in the Presidential Order and the State and its agencies would be bound to so conduct their affairs, in conformity with the meaning of the expression, so identified.

We have noticed above, that the festering grievances of the people belonging to the different regions in the State and the need to achieve wholesome emotional integration of its people, led to the enactment of Article 371-D. The economic differentia, the unequal employment and educational opportunities and facilities available to the people in different regions of the State were the mischief that was sought to be addressed by Article 371-D and by the mechanism conferring to the President wholesome power to formulate an appropriate order, tailored to the specific felt grievances of the people of the State. The immunity accorded to the Presidential Order from the operation of the other provisions of the constitution also, highlights the constitutional concern and sensitivity to the gravity of the intra-State grievances of Andhra Pradesh.

Exercising the plenitudinous powers under Article 371-D, the President formulated two (2) Presidential Orders one for public employment, known as the Andhra

Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 and the other to regulate the educational opportunities – the Presidential Order. Detailed prescriptions for organisation of local cadres, allotment of persons to the local cadres, definition of local cadres and provisions for transfer of persons within local cadres, definition of local candidate, specification of the percentage of reservation in the matter of direct recruitment to different categories of posts, have all been specified in great and minute detail, in the Presidential Order pertaining to public employment in the State. Similar detailed prescriptions are incorporated in the Presidential Order pertaining to the educational opportunities (with which we are now concerned). This Presidential Order mandates (Paragraphs-5 and 6) that 85% of the available seats should be reserved in every course of study (*emphasis*).

The Presidential Order does not leave scope for the exercise of discretion by the State, as to which course of study should be considered appropriate for administration of local area reservation. The Presidential Order has itself, exhaustively and exclusively occupied the whole field and has specified the extent of local area reservation and the courses of study to which local area reservation should be excluded. Wherever the Presidential Order considered that certain courses of study are not required to be subjected to local area reservation i.e., non-State controlled educational institutions, correspondence courses and the like, the Presidential Order has clearly delineated the exclusion. These detailed prescriptions dictate the conclusion that all courses of study in 'educational institutions' in the State (except those specifically excluded) are subject to the local area reservation mandate of the Presidential Order and that in every course of study, 85 per cent of the seats shall be reserved either for a local area (in the case of non-State-wide) or for allocation in the specified ratio to the three local areas (in the case of State-wide universities and educational institutions). From the enacting history of Article 371-D and the fullness of the prescriptions of the Presidential Order, the conclusion is compelling that the claims of persons belonging to different regions of the State, in respect of access to educational opportunities in every course of study, with such access ensured by limiting the competition by applying local area reservation, has been provided.

If the State and its administrative agencies such as the Health University are free to

evolve idiosyncratic definitions from time to time, course to course or academic year to year, as to what constitutes 'course of study' then the painstaking and elaborate exercise of the constitution amendment and the detailed formulation of the Presidential Order could be rendered nugatory and inefficacious. If the State and its agencies were free to consider, for instance, that 'course of study' mean some generic categorisation like -- Arts, Sciences and the Humanities, by such artifice of over-broad labelling, the aspirations of the people belonging to the different parts of the State could be jettisoned by the definitional inanity of the State and its agencies.

'Every course of study' in the Presidential Order, in the considered view of this court, means every distinct, academic and scholastic pursuit having distinct curriculum; training; academic, scientific or technical content, resulting in the conferral of a distinctly identifiable degree, diploma or certificate or having distinct career opportunities. In such view of the matter, distinct and dissimilar courses of study cannot be clubbed merely on account of the fact that as a matter of linguistic exercise an appropriate label could be evolved to describe such grouping of the distinct and dissimilar courses of scholastic pursuit.

Our aforestated analyses, cannot and is not intended to comprehensively identify and define what the expression 'course of study' in the Presidential Order connotes in all situations and circumstances. We are, however, satisfied that the several Post Graduate Medical Courses of Study, Degree and Diploma, Clinical and Non-clinical, clubbed together and treated as one composite course of study by the State Government and the Health University, for the academic year 2005-2006, do not constitute 'one course of study', but are different and distinct courses of study within the meaning of the expression 'every course of study' in paragraph Nos. 5 and 6 of the Presidential Order. Each such distinct course of study is independently subject to the local area reservation discipline mandated by the Presidential Order, whether under paragraph 5 or paragraph 6, as is appropriate and in accordance with the other specifications of the Presidential Order.

The other justification/defence of the State and the Health University, that the grouping of the different courses and their alphabetical arrangement (the 'seat matrix') was devised to enable application of the existing and readily available 100 point roster – is a defence that is ingenuous and misconceived. The seminal and critical exercise of a Constitution amendment, the elaborate and detailed

formulations of the Presidential Order and the painstakingly crafted package of remedies were not intended to be diluted or eschewed to confirm to the limitations of a statistician's craft, an executive authority's wisdom or an administrative agency foresight, vision and sense of priorities.

The timeless principle in ***Heydon***'s case (76 ER 637) also known as the rule of purposive construction or the Mischief Rule was explained by S.R.Das, C.J, in ***Bengal Immunity Company v State of Bihar ()*** as follows:

> "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon*'s case was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:
>
> 1st – What was the common law before the making of the Act,
>
> 2nd – What was the mischief and defect for which the common law did not provide,
>
> 3rd – What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and
>
> 4th – The true reason of the remedy;
>
> and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*." (*emphasis added*).

The above principle is apposite in the facts of this case.

Analysis of the 1997, 2005 Rules and the Seat Matrix in the context of the Presidential Order, as interpreted hereunder:

We have held above that each course of Post Graduate Medical study, Clinical and Non-clinical, Diploma and Degree should be distinctly considered for application of the 'local area reservation' mandate of the Presidential Order, whether for 'non-State-wide universities and educational institutions' or 'State-wide universities and educational institutions'. We now proceed to consider how the 1997 and the 2005

Rules have processed this mandatory requirement and whether the provisions of the Presidential Order have been implemented in drawing up the 'seat matrix'.

1997 Rules:

Rule 3 (1) ordains that 15%, 6% and 25% of the total number of notified seats in each group, for degree and diploma courses separately, be reserved for SC/ST/BC respectively. These Rules, thus postulate separate treatment of Degree and Diploma courses and of each group in such Degree and Diploma course. These Rules however do not define the composition of the expression 'group'. Rule 4 reiterates in brief, the provisions of the Presidential Order.

2005 Rules:

Rule I (i) and (ii) mandate that the Health University shall prepare the 'seat matrix' by arranging the courses in an alphabetical order and that under each course, the colleges should again be arranged in alphabetical order separately for the three university local areas and the 'State-wide seats'; that roster points should be allotted to all the seats duly mentioning 'women' and 'Physically Handicapped' points as applicable under the Rules, separately for the three university local areas and the State-wide seats, continuing from the point where the roster ended in the previous year.

Rule III specifies the option available to meritorious reserved candidates to opt for a different course after exercising an initial option for an open seat. The other Sub-rules of Rule III also indicate that the State Government is conscious that each course of Post Graduate Medical study is a distinct course.

Rule IV deals with 'counselling procedure'. Its various provisions clearly indicate the recognition that each Post Graduate Medical Course is a distinct course of study.

From the above analysis of the provisions of the 1997 and 2005 Rules, it is evident that despite a recognition and awareness that each course of Post Graduate Medical Study is a distinct course, the State consciously decided upon grouping of seats (in the 1997 Rules) and in formulating the 'seat matrix' protocol by the arrangement of all the distinct courses, degree and diploma, clinical and non-clinical arranged alphabetically. The contention that all the several courses of Post Graduate Medical studies were considered as one and that the expression 'course

of study' in the Presidential Order was considered by the State Government as comprising the composite of all the distinct Post Graduate medical studies, is a contention that is inconsistent with the language, tenor and the phraseology of the 1997 and 2005 Rules.

'**Seat Matrix**': We now consider the 'seat matrix' prepared for 'non-state-wide seats' and the 'State-wide seats', from the 'seat matrix' compilation furnished by the Health University (2005-2006). We have already pointed out earlier in this judgement that even taking the 'seat matrix' as it is [without going into the validity of 'grouping' (in issue No.3 (a)], there is seen 'excess reservation' in favour of 'local candidates', i.e., beyond the limits permitted by the Paragraph-5 of the Presidential Order and that the 'seat matrix' is invalid for that reason.

We now test the 'seat matrix' on the basis of our conclusion that each course of Post Graduate Medical study is a distinct course to which the provisions of the Presidential order should be applied course-wise and not in common (*qua* our conclusions on Issue No. 3(b).

For this purpose, we consider the 'seat matrix' prepared for the 'non-state-wide seats' of the Osmania University region (local area). The 'seat matrix' comprises (12) Clinical Degree courses from Anaesthesia to TB and (8) Non-clinical Degree courses from Anatomy to SPM interspersed alphabetically. Similarly, in Diploma courses (10) Clinical courses from DA to DTCD and (2) Non-clinical courses – DCP and DPH – are arranged alphabetically, the diploma courses arranged below the 'degree courses'. The number of seats for the Osmania University local area in the several colleges within the said area, vary in number; minimum of 'one' seat in the Diploma Clinical course of D.Ortho, to a maximum of 28 seats in the Degree Clinical course of General Surgery. We have analysed whether the Presidential Order mandated local area reservation is fulfilled when applied to each course separately. We find clear violations of the Presidential Order.

We now state these violations: O & G, a Clinical Degree course, comprises (22) seats in (5) colleges within the Osmania University local area, (4) un-reserved seats are shown in the 'seat matrix' (page 27 of the 'seat matrix' compilation); one each in DCMS and KM Colleges and (2) in Osmania Medical College. Under the Presidential Order (paragraph-5), 85% of the available seats in every course of study should be reserved in favour of 'local candidates'. 85% of 22 seats come to 18.7. In

compliance with the provisions of the Paragraph-5 (2), any fraction should be counted as ‘one’. Thus, (19) seats in O & G should be reserved in favour of ‘local candidates’ and (3) seats left ‘un-reserved. In the ‘seat matrix’ (4) seats are left ‘un-reserved’ constituting a shortfall of ‘one seat’ for the local candidates of the Osmania University local area -- a clear transgression of the Presidential Order.

In the ‘clinical degree course of Paediatrics (11) seats are available. One seat each in Gandhi and Osmania Medical colleges are shown as ‘un-reserved’. Under paragraph-5 of the Presidential Order (counting the fraction as ‘one’) (10) seats should have been reserved in favour of ‘local candidates’ and only ‘one seat’ could be treated as 'un-reserved’. This again is a clear violation of the Presidential Order. In the Clinical Degree course of R & D, all the (4) available seats are shown as reserved for ‘locals’, now violating the provisions of the Paragraph-5 (3).

In the Non-clinical Degree course of Forensic Medicine, of the available (10) seats, two seats (one each) in Gandhi and Osmania Medical Colleges are shown as ‘un-reserved’ constituting a shortfall of ‘one seat’ for local candidates, in terms of the Presidential Order.

Mr. J. Sudhir, the learned Special Government Pleader contended that mathematical precision is not required and that if a broad measure of substantial compliance with the statutory mandate is achieved, the resultant product of State action cannot be invalidated.

In the context of the provisions of the Presidential Order, we reject this contention. We are not required to consider, in this case, the general principle as to whether in the application of affirmative action or constitutional and other statutory prescriptions as to equality before the law and equal protection of laws programmes, substantive compliance by the State constitutes adherence to the legal mandate. The Presidential order is enacted to be the predominant statutory instrument that is constitutionally endowed with a plenary and dominant operation over the other provisions of the Constitution and any other law or instrument. The Presidential Order has prescribed the percentage of reservations to be administered in favour of local candidates. It has also specified that a fraction of a seat should be counted as one insofar as local area reservations are concerned, so, however that at least one

seat shall be 'un-reserved'. Such detailed prescriptions in a dominant statutory instrument of the stature of the Presidential Order whose dominance is specifically entrenched by a constitutional provision, in our considered view, admit of no negotiation. The Presidential Order dictates the priorities that should inform the State and its administrative agencies. Inflexible compliance with the provisions of the Presidential Order is the mandate of the constitution as also of the provisions of the Presidential Order {Article 371-D (10) and paragraphs No. 9 and 10}. In the context of the manifest and unambiguous mandate of the predominant instrument – the Presidential Order, the contention of the State, based on general principles, cannot be countenanced.

On the analysis above, we find and hold that the 'seat matrix' is invalid, both on principle and on its application to the facts as revealed in the 'seat matrix' prepared by the Health University.

The official respondents have urged, in defence of the 'seat matrix' that it was evolved for the purpose of addressing the practical problems involved in accommodating the large number of 'non-local area reservation', which could not be accommodated in the limited number of available seats in each distinct course of study. It was also contended that other unwholesome practices had been perceived to remedy which the 'seat matrix' formula was evolved including the application of 100-point roster. Paragraph-10 of the Presidential Order enables the operation of other affirmative action programmes only insofar as such programmes are not inconsistent with the Presidential Order. In the context of the provisions of Article 371-D and of the Presidential Order {in particular the provisions of paragraphs No.9 and 10 therein}, any policy choice of the State whether by a statute or a rule or regulation will have to substantively and procedurally comport with the Presidential Order. Where they are incompatible to any degree, the mandate of Article 371-D (10) and of paragraph Nos. 9 and 10 of the Presidential Order would spring into action and invalidate the State action, *pro tanto* the incompatibility. The claim of benign motives by the State is irrelevant and a *non sequitur*.

On behalf of the State and Health University, reliance is placed on the following decisions in support of the contention that 'grouping of several courses' of Post Graduate Medical Study is not invalid:

1. ***University of Cochin vs. Dr. N. Raman Nair*** ()

2. ***A.P Scheduled Castes Welfare Association vs. Govt., of A. P.*** *() and*

3. ***Koganti Jaya Krishna*** (4 supra)

In ***Dr. Raman Nair***'s case (9 supra), inter *alia*, the grouping of certain teaching posts in the Cochin University, for the purpose of application of reservation in favour of the Scheduled Castes, the Scheduled Tribes and the other Backward Classes, fell for consideration. In ***A.P. Scheduled Castes case*** (10 supra) also, the notification issued by certain universities in the State, grouping departments and subjects and arranging them in alphabetical order within the groups, for the purpose of implementing the State policy of reservation, fell for the consideration of a Division Bench of this Court. These decisions, in our considered view, offer no guidance nor postulate any binding principle applicable to this case, having regard to the distinct legal environment of this case involving the operation of a dominant instrument –the Presidential Order with its detailed specifications and the background constitutional prescriptions and signals, which we have already referred to. Reservations made by the State in favour of SC/ST/BC/Women/PH and the like constitute programmes of affirmative action, within the domain of the State, either by the legislative prescriptions or executive action. These cases do not involve factual circumstances where the operation of a dominant instrument mandates prioritised and unswerving compliance, even the eclipse of the other instruments of the State. These decisions consider the interactive operation of the provisions of several State instruments such as the provisions of the University Act and the roster point system prescribed by rules in the State Public employment area. On a harmonious construction of the several applicable provisions, no invalidity in the State action was discerned. It should, however, be noticed that even in ***Dr. Raman Nair****'s case* (9 supra) the Supreme Court observed in paragraph-12 "… A classification which puts all classes and categories of services from the Peons to Professors together, may, by destroying the distinction between the classes and categories of service, seem to run counter with the words used in Section 6 (2) (*of the Cochin University Act, 1971*)'. The Supreme Court also observed that it is not called upon to determine the reasonableness of the classification which may put the teaching and non-teaching staff in one class or category.

Even on settled authority, affirmative action programmes, traceable to equality injunctions of Articles 14 to 16 of the Constitution, come accompanied with operational flexibility, for achieving the broad purposes of equality. No such

flexibility is vouchsafed in the explicit provisions of the Presidential Order.

Koganti Jaya Krishna's case (4 supra) is the decision of a Full Bench of this Court. The petitioners appeared for the Common Entrance Test known as EAMCET for the year 2001 and were aspirants for admission in Engineering Courses. The relevant Rules were framed in exercise of the powers under the 1983 Act. A Common Entrance Test for the several courses in Engineering disciplines was conducted. The " Sliding Rule" propounded in **Ritesh Sah's** case (3 supra) was applied during counselling and admissions, into the different disciplines of the Engineering courses. Application of the Sliding Rule was the principal challenge as also the provisions of a Government order by which the Sliding Principle was made applicable (G.O.Rt.No.550, dated 30-07-2001). To buttress this challenge and to point out the inappropriateness and irrationality of applying the Sliding Principle to different and distinct courses of Engineering studies, it was pointed by the petitioners that each branch of an Engineering subject is a distinct course by itself and cannot be generically considered as a single course and that on these premises, admissions should be course wise and if so the Sliding Principle could not be applied. S.B.Sinha,C.J (as his Lordship then was) held that application of the Sliding Principle in the factual context of the case was inappropriate and unsustainable and allowed the writ petitions. The majority opinion was rendered by V.V.S.Rao,J speaking for himself and B.Sudershan Reddy,J. The majority opinion incidentally considered the issue whether each Degree course in Engineering (like Civil Engineering, Electrical Engineering, Electronics Engineering, Information Technology Engineering) constitutes a distinct course of study. In Paragraphs 89,90 and 91 the majority position on this aspect is set out. We extract, to the extent relevant:

Para:89:

"The Presidential Order is intended to provide for equitable opportunities and facilities for the people belonging to different areas of the State of Andhra Pradesh. The language in Article 371-D(1) is very clear to that effect. It is not intended either to help a group of people or redress a class of students with whims of their own. Paragraph 5 of the Presidential Order provides that 85% of the available seats in every course of study in every institution and in every local area shall be reserved in

favour of local candidates. The crucial words are " course of study" and "local area". Course of study is not defined in the Presidential Order. Each degree course whether in Sciences, Arts, Commerce or Technology is a course of study. Every course of study may consist of branches of special study, but that branch itself cannot be called a course of study. It is true that MBBS is a monolithic course unlike B.E., or B.Tech., course which may be consisting of special areas of study like Civil Engineering, Electrical Engineering, Electronics Engineering, Information Technology Engineering etc. Merely because there is a provision for studying a special branch in B.E course we cannot call each branch a course of study of B.E."

-

Para:90

"The rules and the Presidential Order as well as the Government orders issued under paragraph 8 of the Presidential Order are clear that reservations for local candidates and reservation for SCs/STs/BCs are provided in all the available seats in every course of study and not in every branch. Therefore, the submissions of the learned Counsel for the petitioners suffers from a fundamental fallacy:"

Para:91

"*The Division Bench of this Court in Chinnayya's case(supra) has considered this question and laid down that reservation should be made local area-wise and institution-wise in each course and not branch-wise. When as a policy, the Government decided to provide for sliding in Engineering colleges in accordance with the law laid down by the Supreme Court in Ritesh Shah as well as this Court in Raghavendra-II, it is not permissible for the petitioners to contend that the sliding rule cannot apply in Engineering Courses or that each branch of the Engineering Course should be treated as a unit for the purpose of reservation. If the petitioners contention is accepted, it would violate the Presidential Order as well as the statutory rules".*

We have carefully considered the conclusions of the learned Full Bench of this Court in ***Koganti Jaya Krishna's*** case on the issue of grouping of Engineering Degree Courses. We find that the Full Bench majority's analysis proceeded on an etymological basis of the words " course" and "branch". There was no lexicographic analysis of the words nor an analysis as to the purposes for which the expression "

course of study " preceded by the word " every" is employed in the Presidential Order. Issues such as whether the expression " course of study" is pluri-signative and ambiguous and if so whether the expression requires dynamic processing by employing principles of purposive construction or the application of the ***Heydon's rule*** were not considered. We also find that on facts, the decision was one involving degree courses of Engineering study and not specialized courses like postgraduate studies or professional courses involving discreet and insular specialised academic pursuits, as is the case in postgraduate medical studies. In degree courses of study even involving separate disciplines like Civil, Electrical, or Electronics Engineering, the course content involves a measure of common curricula in the different disciplines. Only to a limited extent and in the later years, is separate theoretical and practical instruction imparted to the students of the different disciplines. In such factual context of Engineering degree studies, the distinction between the different disciplines is perhaps not absolute. What is true of Engineering degree courses, on the above analysis, does not hold good in the case of post-graduate medical studies. Each postgraduate medical course of study and degree and diploma courses are wholly distinct and specialised courses of study. The judgment in **Koganti Jaya Krishna's case**, (4 supra) involving as it does an analysis of degree courses in Engineering thus offers no guiding principle on the legitimacy of grouping of post-graduate medical courses of study.

We remind ourselves of what has been stated by **Harry H.Wellington**, former Dean of the New York Law School: " in constitutional adjudication, where non-judicial change can sometimes be difficult, stare decisis has less of a grip than it does where statutory interpretation or the common law is involved. Nevertheless, prior constitutional decisions are a major source of law."—**Interpreting the Constitution (Yale University Press-1990).**

In ***Groves v. Board of Education of St.Mary's county,Maryland(164 F.Supp.621)*** the expression "course" was considered:

" Course means either an entire series of studies having a unified purpose usually leading to a degree or diploma, as a four-year course, or, in schools and colleges, a unit of instruction consisting of recitations, lectures, laboratory experiments, or the like in a particular subject, and also, of the subject matter of such a unit of instruction."

We have, earlier in this judgment, considered the dictionary meaning of the word “course” and have come to the conclusion that it has different shades of meaning of which the appropriate must be identified in the context of the statutory instrument in which the expression occurs. The decision in **Groves’s case** (supra) reinforces the ambiguous character of the expression “course” and, therefore of the phrase “course of study” employed in the “ Presidential Order”.

On the analysis above, we are satisfied that none of the three decisions relied upon by the official respondents, offer a persuasive or binding guidance on the issue whether grouping of postgraduate medical courses of study is compatible with the mandate of the Presidential Order Provisions. The principle of ***Stare decis*** is this:

“ What is binding is the principle underlying a decision. While applying the decision in a later case, the later Court should try to ascertain the true principle laid down by the previous decision, in the context of the questions involved in that case and from which the decision takes its colour. A decision cannot be relied upon in support of a proposition that it did not decide. A judgment is not to be construed as an Act of Parliament. It is to be considered in the context of the questions, which arose for consideration in the case in which the judgment was delivered and not as embracing all aspects of every question relating to the subject or as laying down principles of universal application- ***Shah Prakash Amichand v. State of Gujarat***,() ; **Gasket Radiators Pvt.Ltd. v. E.S.I.C**.(}; **Amar Nath Om Prakash v. State of Punjab,()** ; **Singla O.P. vs. Union of India**,().

Issue No. 4 :-

The procedure and principles for “sliding” incorporated in the “Seat Matrix” and applied to the PG Medical admissions for the academic year 2005-2006, is challenged. In the 1997 Rules, Rule-10 sets out the procedure for selection to the PG Medical Courses. There was no application of the 100-point roster. The 100 point roster was applied to medical admissions in 2003 under G.O.Ms.No. 719. Rule 10 therefore required that on the notified date candidates will be called for counselling in the order of merit and permitted to opt for subjects of their choice as available. Sub-rule (vi) of Rule-10 specifies that after the first selection the resultant vacancies would be displayed and will be open to all candidates with ranks below the rank of the candidate who vacated the seat for a particular specialty in a local

area as also for candidates who were absent in the earlier selections. The sliding principle was not a part of the 1997 Rules. This principle came to be applied pursuant to the decision of the Supreme Court in ***Ritesh Sah***'s case (3 supra).

The 2005 Rules (impugned herein) incorporate the sliding principle in Rule-IV. Sub-rule (vi) of Rule IV (extracted above in this judgment) enables a merit candidate belonging to a specified reserved category to attend the open merit counselling, exercise his option for a merit seat in a course or college and thereafter opt out in favour of a seat in a course or college in the reservation category. On such later option for a different course or college, the seat vacated by the candidate should be filled up by the next meritorious candidate belonging to the same reservation category as the candidate who exercised to opt out of the seat or college, as the case may be. On a true and fair construction of the provisions of sub-rule (vi) of Rule-IV it would appear that the open seat in a course or college vacated by a meritorious reservation candidate could be filled up only by the next meritorious candidate belonging to the same reservation category. Sub-rule(ix) however, provides an illustration according to which where a meritorious reserved candidate vacates an open category seat, the vacated seat should be offered to the next meritorious candidate belonging to the same reservation category, who may however choose from among the courses available for the same reservation category, including the vacated seat. There is therefore an apparent conflict between the provisions of sub-rules (vi) and (ix). These are among the many contradictions and ambiguities in the 2005 Rules. Such however need not detain us in considering the principal bone of contention between the parties to this *lis*.

The grievance of the petitioners with regard to the sliding procedure provided in the 2005 Rules is that – (a) the sliding procedure is wholly inappropriate, when under the Presidential Order there are different local areas and local area reservation is mandatory to the extent specified in the Presidential Order; (b) that the sliding principle cannot be applied to different courses which are distinct from each other and for which counselling and admission should be separately undertaken and the provisions of the Presidential Order also separately applied; and (c) that blocking an open seat in a course of study or college, vacated by a meritorious reserved candidate only for being offered to another reserved candidate of the same reservation category is a wholly arbitrary principle, that goes beyond even the ***Ritesh R Sah's*** principle (3 supra) . It is the further contention that by this

formulation of the sliding principle, excellence in higher education even the extent of unreserved seats is a total causality. Also according to the petitioners, this format of the sliding principle subverts even the basic premises of the affirmative action programme of the State. Merit candidates are so called on the basis of their merit ranking in the common entrance test. These candidates include candidates otherwise belonging to the reserved denominations but who have obtained higher ranks at the common entrance test. When a merit candidate belonging to a reserved vacancy initially opts for an open seat, he opts for a seat among the few unreserved seats available for the open merit. When after such initial option he vacates the seat for choosing another seat in a course or college of his choice in the reserved category to which he otherwise belongs, the next candidate in the order of merit who may even be a candidate belonging to a reserved category should legitimately have the choice for opting for the vacated seat. If this is not followed, a candidate belonging to the same reserved category as the merit candidate who opted out of the initially chosen seat and who is far below in the over all merit ranking is made exclusively eligible to opt for the vacated seat, thereby totally subverting even the blinking component of equal opportunity, say the petitioners.

The principle of sliding was propounded by the Supreme Court in the ***Ritesh Sah***'s case(3 supra). The procedure for admission to M.B.B.S. and B.D.S. courses in the State of Maharashtra fell for consideration. On facts, merit candidates belonging to the reserved category were admitted against the reserved category seats resulting in denial of admission to the petitioner, also a reserved candidate but lower in the order of merit ranking than the others who were given admission in the reserved seats. In defence the State Government admitted the fact and urged relying on the rules framed for admissions, that the respondents who also belong to the reserved denomination but have obtained higher merit ranking entitling them to be considered in open seats have nevertheless been allowed to take admission in reserved seats as otherwise they would be prejudiced. According to the State Government if the higher/merit rank candidates belonging to the reserved dimensions were confined to a choice of seats left unreserved, these candidates would be deprived of getting admission in premier colleges of their choice even though they had secured higher ranks than the other reserved candidates of the same category. The decision of the Supreme Court was rendered in the above factual context. The Supreme Court

reiterated the principle that a student entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered as having been admitted against seats reserved for reserved category. Having held so, the Supreme Court propounded the principle of "sliding" as a countervailing measure to remedy the grievance of the merit ranked reserved category candidates as regards the choice of colleges. The Supreme Court held:

> "… But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their opinion for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate."

It requires to be noticed that the sliding principle was pronounced in ***Ritesh Sah***'s case (3 supra), in respect of Graduate discipline seats in M.B.B.S. and B.D.S. courses. On facts each of these courses are monolithic, the counselling being separate for each of these courses. The complexities were two dimensional: (a) adjustment of choices amongst reserved category candidates and (b) choices as regards colleges.

Whether the above principle is appropriate or could be accommodated in the context of the local area reservations under the Presidential Order (in Andhra Pradesh) coupled with the additional complexities of the numerous sectoral reservations and the several distinct PG Medical Courses of study, are all issues, which require a first address by the State. We need say no more on this aspect. We have concluded that the "Seat Matrix" followed by the State for the PG Medical admissions of the academic year 2005-06 is invalid and inoperative on account of violation of the provisions of the Presidential Order (for having provided local area reservations both in excess of the permissible limits and below the permissible limits). We have also concluded that the grouping of the several distinct PG Medical courses of study is

invalid for being incompatible with the provisions of the Presidential Order. In the circumstances and consequent on our above conclusions, in redesigning the appropriate admissions procedure, given the limited number of seats in each course of P.G. Medical studies, whether the Government and the Health University choose to adopt the sliding principle at all and if so in what manner and form, are all matters best addressed by the State and the Health University. The question whether the rule of sliding as provided in the 2005 Rules is unreasonable and arbitrary, need not be considered, in the light of the principal conclusions arrived at by us in this case.

I n ***N.T.R. University of Health Sciences, Vijaywada and another v Y. Raghavendra ()***, a Division Bench of this court was considering the question as to the application of the sliding rule in MBBS courses for the academic year 1999-2000. A Full Bench of this court in ***Koganti Jayaprakash***'s case (4 supra) also considered the sliding principle and upheld its application to Degree courses in Engineering while upholding the grouping of the several degree Engineering courses. We have already analysed the principles spelt out in this case on the aspect of grouping [in Issue No.3(b)]. As indicated in the preceding paragraph, consequent on our principal conclusions in this case, holding the "Seat Matrix" system in valid, the desirability of or appropriate procedure for applying sliding rule to PG Medical admissions, should be considered by the State Government and the Health University. As none of the extant precedents have considered the additional factual dimensions which define PG Medical admissions, we refrain from making any pronouncements in advance as the whole issue of P.G Medical admissions falls for reconsideration by the State Government and the Health University.

We therefore leave the questions presented under this issue No.4 open.

There are a few subsidiary issues (the proponents of these issues however consider them equally substantive) which require to be dealt with before conclusion. These are –

(a) Whether applying reservations in favour of SC, ST, BC, PH and Women in the 15% 'unreserved seats', is valid?

(b) Whether application of the 100 point roster to PG Medical admissions is valid?

(c) Whether the 'Seat Matrix' system followed by the State and Health

University is not a policy choice that it outside bounds for judicial review?

(d) Whether petitioners, having appeared at the counselling are estopped from challenging the 'Seat Matrix' and the Rules of admission?

The Additional issues:

Additional Issue (a):

The petitioners contend that the rest of the available seats, after local area reservation to the extent of 85 per cent of the available seats, are 'un-reserved seats', under the Presidential Order. Thus, there can be no reservation of any kind in respect of these seats. On behalf of the official and other impleaded respondents, this contention is resisted. They assert that the Presidential Order provides local area reservation to the extent of 85 per cent of the available seats, in both non-State-wide and State-wide universities and educational institutions and in accordance with the detailed prescriptions in paragraphs No. 5 and 6 of the Presidential Order. By the provisions of paragraph no.10, the State government or other competent authority is preserved the liberty and policy choice to provide for reservation in favour of women, socially and educationally backward class of citizens, the Scheduled Castes and the Scheduled Tribes. The only restriction is that the provision of such reservations should not be incompatible with the provisions of the Presidential Order. In this view of the legal position under the Presidential Order, the State is free to provide for other forms of reservations in the 85 per cent component reserved for local candidates under the Presidential Order and also in the 15 per cent of the available seats outside the cover of the Presidential Order, contend the State and the Health University.

The petitioners rely on the decision of the Supreme Court in the ***N.T.R. University of Health Sciences Vs.G. Babu Rajendra Prasad()*** in support of their contention. This decision of the Supreme Court was in an appeal by Special Leave against the judgement of a Full Bench of this Court. In the decision of a Full Bench of this Court in the ***Registrar, N.T.R. University of Health Sciences Vs.G.B. Rajendra Prasad***(), this Court was considering the question whether reservations in terms of Article 15 (4) of the Constitution in favour of the SC/ST/BC could be provided even in respect of the 15 per cent 'un-reserved seats' under the Presidential Order, 1974. Having considered the provisions of the Presidential order, the enabling provisions of the 1983 Act and the relevant Post Graduate Medical Admission Rules, this court

held that the procedure followed, calculating the 46 per cent non-local area reservations (15% for SCs; 6% for STs and 25% for BCs) by taking all the available seats into consideration, but earmarking the seats so reserved only in the component of 85 per cent of the seats (reserved for local candidates under the Presidential Order) is illegal and not in conformity with the consolidated instructions issued by the State for implementing the provisions of the Presidential Order (G.O. (P) No. 646). This Court held that the number of reserved seats should be computed for all the available seats and apportioned in both the blocks of 85 per cent seats reserved for local candidates as well as in the 15 per cent un-reserved seats. The Supreme Court in ***G.B. Rajendra Prasad***'s case (16 supra) upheld the policy of the State in not providing reservations referable to Article 15 (4) of the Constitution in the 15 per cent of the seats considered 'un-reserved' under the Presidential Order and held that in view of the enabling provisions in Articles 15 and 16 of the Constitution, the State is entitled to adopt a policy providing for reservations. The method and manner of providing reservations is within the policy choice of the State and is not normally amenable to challenge, held the Apex Court. On facts, the Supreme Court held that in view of the limited seats available for admission in the super speciality courses and the operation of the regional reservations under the Presidential Order, the State had chosen to confine the reservations to the larger component of 85 per cent of the seats that are reserved for local candidates under the Presidential Order. The Supreme Court further held that once it is found that reservation has been made for the reserved category candidates on the total number of seats available in each course, the High Court must be held to have committed a manifest error in directing any further reservation in the remaining 15 per cent of the seats as well, as that would breach the established 50 per cent ceiling limit for reservations. The decision of the Supreme Court does not expressly or by any compelling implication propound a law or principle that reservations are prohibited in the 15 per cent of the available seats uncovered by the provisions of the Presidential Order.

The provisions of the Presidential Order, we have noticed, do enable affirmative action programmes of the State even in the 85 per cent of the available seats reserved for local candidates subject only to the condition that such reservations do not trench upon any area covered by the provisions of the Presidential Order in a manner incompatible with the provisions. The 15 per cent of the remaining available

seats are beyond the cover of the Presidential Order and are not the concern of the Presidential Order. That area is wholly within the domain of the State insofar as its affirmative action programmes are concerned, subject only to limitations other than under the Presidential Order.

We accordingly hold that providing reservations for the Scheduled Castes, Scheduled Tribes, Backward class, women and the Physically Handicapped in the 15 per cent of vacancies/seats uncovered by the provisions of the Presidential Order, is permissible and valid. The contention of the petitioners on this aspect is rejected.

Additional Issue No. (b):

Independent of the other issues, already dealt with hereinabove, the petitioners contend that the State action in applying the 100-point roster and year to year (running roster) to Post Graduate Medical admissions is invalid. They contend that the roster has been evolved in the area of public employment and is inappropriate for application to admission to the educational institutions, particularly Post Graduate Medical admissions. The petitioners' contention in this regard is a composite one. The contention is that each course of Post Graduate Medical study being a distinct course of study, the several courses cannot be clubbed and the 100-point roster applied to such compendium of seats of all the combined Post Graduate Medical courses. We have already dealt with the issue regarding the clubbing of the several distinct Post Graduate Medical courses (Issue No.3 (b). We have concluded that the clubbing of the several courses, including Degree and Diploma courses, is invalid. Independent of that aspect is the application of the 100-point roster to seats in educational institutions invalid, is the question?

In ***Preeti Puranik's*** case (1 supra), a Division Bench of this Court held that the administration of the admissions programme involving a complex component of reservations is better implemented by application of a roster. This court in the above case also held that there was no precedent, which supports the petitioners' contention that a roster is applicable exclusively in the domain of employment. On behalf of the State and the Health University, some decisions have been cited to contend that application of the roster is conducive to the better administration of employment or educational opportunities, where a complex process of accommodating multi-sectoral reservations is involved. We do not consider it

necessary in this case to engage in the exercise of a parade of familiar learning.

In our considered view, a roster *per se* is a neutral tool having no complementary or pejorative characteristic. It is a tool that enables better and efficient administration of identifying posts or seats in academic programmes for effectuation of multi-sectoral interests where many complex interests have to be accommodated in limited employment or educational opportunities. The appropriateness of the roster and how large the roster should be – whether a 100-point roster, a 10 or 20 point roster – depends upon the number of sectoral interest that require to be accommodated and the scale of opportunities in employment or education available for sharing, either in one year or in consecutive years as would render the roster a tool, pragmatic and efficacious. No hard and fast rule or principle of transcendent vitality could be spelt out, as to whether a particular roster is an appropriate tool or even whether any roster is the tool of choice. A roster is not value pregnant – good or evil, it is a tool, appropriate or otherwise, dependant on variable facts and circumstances.

Additional Issue – C:

On behalf of the State and the Health University it is contended that the 'Seat Matrix' is a policy choice evolved by the State and provided for in the 2005 Rules to effectuate the multiple reservation components; The clubbing of the various PG Medical courses including Degree and Diploma courses, in each university local area and for State-wide seats, their arrangement in an alphabetical order college-wise and the application of the 100 point roster to such cumulated matrix of seats, is a policy choice of the State that is out of bounds for judicial scrutiny and review. In support of this contention a number of precedents have been cited.

There is nothing magical in the label " policy" that confers immunity from judicial scrutiny particularly when challenged as *ultra vires*. Where the State action, whether legislative or administrative is contrary to the provisions of the constitution or to a governing and applicable legislative instrument, as the case may be, such executive action must fail and be invalidated on the principle of *ultra vires*. A policy decision of the Executive enjoys no special immunity by being merely so labelled. In this case we are not concerned with the wisdom of the " seat matrix " system adopted by the State and the Health University in making admissions to PG Medical courses. If the procedure adopted by the State does not offend the governing legal architecture, the provisions of the Constitution, the Presidential Order or any other legislation

governing the field, this Court is not normally concerned with the wisdom of the policy choice. Even among the policy choices greater deference is accorded where the policy choices have an economic component or are intrinsically administrative in nature. These are well settled principles. In the case on hand the " seat matrix " system followed by the State and incorporated in the 2005 Rules is challenged on the ground it transgresses the provisions of the Presidential Order. We have considered the challenge to the "seat matrix" in the above context alone. These are purely legal questions having an adjudicative disposition and normatively within the domain of the judicial branch. This contention merits no acceptance and is accordingly rejected.

Additional issue: D :

This is a contention of the State and the Health University *in extremis*. The contention goes – the petitioner having appeared at the Common Entrance Test and at the counselling, are estopped from challenging the " seat matrix" and the rules of the admission. The relevant facts need to be recorded. The notification of admissions to Postgraduate medical courses of study for the academic year 2005-2006, was issued by the Health University on 01-02-2005 prescribing the last date for submission of applications as 19-02-2005 and specifying the date of the Common Entrance Test as 27-02-2005. After this notification, pursuant to which the petitioner appeared at the Entrance Test, the State Government issued G.O.Ms.No.44 Health Medical and Family Welfare (E2) Department, dated 25-02-2005, which was published in the gazette of even date, introducing amendments and making partial modification to the PG Medical admission Rules (the 1997 Rules).

When the petitioners applied pursuant to the Health University's notification these rules were not issued. They were issued, in fact, two days prior to the date of the Entrance Test. Be that as it may, the question is whether mere writing of the Entrance Test by the petitioners and appearing for counselling, constitute a waiver of their fundamental rights to equality before the law and equal protection of the laws, guaranteed under Article 14 of the Constitution, of which the provisions of Article 15 are a facet.

That there could be no waiver of fundamental rights is a principle too well settled vide -- ***Basheshar Nath Vs. Commissioner of Income Tax, Delhi and Rajastan***

and another ().

Reliance is placed for the contention, on the following decisions.

1. ***Om Prakash Shukla v. Akhilesh Kumar Shukla*** ()

2. ***Union of India v. N.Chandrasekharan***( )

3. ***Swaran Latha v. Union of India*** ( )

In ***Om Prakash Sukla'***s case(19 supra), on facts and on analysis of the applicable law and the rules, the Supreme Court found against the successful writ petitioner before the High Court against which the appeal by Special Leave was filed and accordingly allowed the Appeal and while doing so also observed in Paragraph 24 that the petitioner could not have been granted any relief as he had appeared for the recruitment examination without protest. The Supreme Court did not expressly or by any implication, hold that on account of appearing at the examination, the writ petitioner was estopped from challenging the recruitment or the rules on the basis of which the recruitment was made.

In ***Chandrasekharan***'s case (20 supra), the appeal by Special Leave was against the judgment of the Central Administrative Tribunal, which allowed an application challenging the selection process and the resultant recruitment for the promotional post of Assistant Purchase Officer. The Tribunal allowed the challenge to the selection process on the ground that excessive waitage was given to the marks at the oral interview. The Supreme Court while holding on merits that in the context of the post to which promotions are to be made, allocation of the marks for oral interview cannot be held to be excessive or arbitrary, observed that as the candidates were aware of the promotion procedure before they sat for written test and appeared for interviews, they cannot turn round and contend later when they found that they were not selected, that the procedure for the recruitment and the marks prescribed for interview are disproportionately high. This decision is not an authority for the proposition that mere appearance at the written test or interview would foreclose the right of a citizen to challenge State action on the ground of unconstitutionality or *ultra vires*.

In ***Swarna Latha***'s case (21 supra) the question was whether the appointment of the

6th respondent by the Chandigarh Administration to the post of Principal, Government Central Craft Institute for Women, Chandigarh, by direct recruitment through the UPSC was invalid for being contrary to the direction issued by the Central Government under Section 84 of the Punjab Re-Organisation Act,1966. On an analysis of the legal position, the Supreme Court found no case on merits infavour of the appellant and in passing observed at paragraph–62, that the appellant cannot approbate and reprobate. Having willingly and without persuasion applied for the post in response to the advertisement issued by the UPSC for direct recruitment and having taken a chance, simply on the ground that the selection committee did not find her suitable for appointment, she cannot be heard to say that the selection of the 6th respondent by direct recruitment through UPSC was invalid. The appellant fully knew under the terms of the advertisement that the Commission had reserved to itself the power to relax any of the essential qualifications. Therefore the appellant is precluded from urging these grounds, held the Supreme Court. This decision does not support the contention of the State that the petitioners having appeared at the Common Entrance Test and the counselling are precluded from challenging the admissions procedure and the rules issued in G.O.Ms.No.44, Medical, Health and Family Welfare (E2) Department, dated 25-02-2005, on the ground of *ultra vires* or that they infringe their fundamental rights under Articles 14 and 15. This contention merits no acceptance and is accordingly rejected.

In conclusion we hold ::

a. that the reservation provided for women and the physically handicapped in the Postgraduate Medical courses for the academic year 2005-2006, is valid.

b. That there is excess reservation infavour of the local candidates, beyond the extent and limits prescribed in the Presidential Order even under the “seat matrix” system adopted for the academic year 2005-2006. The “seat matrix” incorporating such excess reservation is invalid.

c. The clubbing of the several distinct

Postgraduate medical courses of study and of the degree and diploma courses, applying local area reservation under the Presidential Order and the other reservations for the SC/ST/BC/Women and Physically Handicapped, to the seats so amalgamated and applying the 100 point roster to them i.e., “seat matrix”, violate the provisions of the Presidential Order. The “seat matrix” is declared invalid and inoperative. The provisions of G.O.Ms.No.44, dated 25-02-2005 incorporating the “seat matrix” are invalid and are set aside.

For the aforesaid reasons, we allow the writ petitions as indicated above.

Having regard to this disposition, it is not necessary to decide Writ Appeal No.757 of 2005, which is directed against an interlocutory order of a learned Single Judge in a writ petition which has been allowed hereby. Writ Appeal No.757 of 2005 is dismissed as infructuous. In the circumstances, there shall be no order as to costs.

_____

J. CHELAMESWAR, J

_____

GHULAM MOHAMMED, J

_____

GODA RAGHURAM, J

Dated. –04-2005.

LR COPY TO BE MARKED

(B/O)

PVSN

Pvsn/Pvks/Tsnr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, The Acting Chief Justice on this the Twenty first day of April, Two Thousand and Five.

… Registrar

One fair copy to the Hon'ble Sri Justice J.Chelameswar, for kind perusal.

One fair copy to the Hon'ble Sri Justice Ghulam Mohammed, for kind perusal.

One fair copy to the Hon'ble Sri Justice Goda Raghuram, for kind perusal.

To

1 The Principal Secretary to Govt. Health, Medical and Family Welfare Department, Secretariat, Saifabad, Hyderabad.

2 The Registrar, NTR University of Health Sciences, Vijayawada.

3 The Secretary, Medical Council of India, Aiwan-e-Ghalaeb Marg, Kotla Road, Opp : Mathasundari College (Women) New Delhi - 110 002.

4 Two CCs to Mr. J.Sudheer, Special Government Pleader, High Court buildings, Hyderabad (OUT)

5. Sri S.Niranjan Reddy, Counsel for the Medical Council of India, High Court buildings, Hyderabad (OUT)

6. Under Secretary, Government of India, Ministry of Law, Justice & Company Affairs, New Delhi.

7. The Secretary, AP Advocates' Association Library, High Court buildings, Hyderabad.

8. Eight LR Copies.

9. Two CD copies.

10. 2 CCS to learned Advocate General, High Court of A.P.Hyderabad.